White Paper on The Planning Act

Government of Ontario

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White Paper on The Planning Act

Government of Ontario

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Ontario

Office of the Minister

Ministry of Housing

Hearst Block
Queen's Park
Toronto Ontario
M7A 2K5
416/965-6456

This White Paper on Ontario's Planning Act sets out the government's proposals for change in the province's local planning system, the system by which municipalities control the way in which land is used and development takes place. The White Paper follows upon the release in June, 1977 of the Report of the Planning Act Review Committee, which made a wide range of recommendations to the government for improving the present local planning process.

I would like to personally thank Professor Eli Comay, Chairman of the Review Committee, and his colleagues Dr. Earl Berger and Mr. Eric Hardy, for the high quality of their report which, generally, has been very well received. It has certainly served its function as the catalyst for debate, as evidenced by the more than 350 public submissions that have been made. In preparing this White Paper my Ministry has paid particular attention to this response.

Because of the extensive public involvement throughout the review process I am confident that a firm basis exists for the changes put forward in this document. The main thrust of the changes - to give municipalities a stronger voice in decisions affecting local planning matters - is consistent with the province's commitment to improve the effectiveness of local government generally.

The White Paper recommendations that form the foundation of the proposed new Planning Act for Ontario are also the result of extensive discussions with many people and interest groups both within and outside the provincial government. The assistance of all of these people is gratefully acknowledged.

A draft of a new Planning Act will be distributed shortly, but I should stress that it has not yet been given first reading in the Legislature. However, the positions expressed in the draft legislation will be reflected in the new Act unless I receive strongly supported reasons for change.

Over the coming weeks my senior staff and I will be meeting with municipal representatives throughout the province to explain the proposed changes. Any written comments must be received no later than November 16th, 1979, in order to be considered prior to the introduction of a new Act. Comments should be addressed to: Ministry of Housing
Local Planning Policy Branch
56 Wellesley Street West, 3rd Floor
Toronto, Ontario M7A 2K4

Claude Bennett
Minister

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Preface

Since the Report of the Planning Act Review Committee (PARC) was published in June 1977, the government has carried out an intensive program aimed at developing a new Planning Act for the province. This White Paper is the result of that exercise.

The Ministry of Housing received more than 350 submissions commenting on the PARC report. As well, it carried out its own evaluation of the Committee's proposals, initiated additional specific studies, and consulted with other Ministries and groups, within and outside government, to arrive at an overall provincial position.

It should be made clear that a White Paper is usually considered a firm statement of government policy, and that is the intent of this document. The changes have been arrived at after the most careful deliberation, and for that reason the government position is as firm as possible and is not expressed as tentative proposals and alternatives.

Although the review has been comprehensive, it will quickly be apparent that a significant part of the present Act has been retained. Many of its elements have worked well and change should not be embarked upon simply for its own sake.

In the chapters that follow, the Review Committee's recommendations will be referred to, so as to establish a proposed basis for change, and the public response will be indicated before the government's position on each matter is set out. In this way the reader need not constantly refer to other documents.

Some immediate improvements to the present system were made in a December 1978 amendment to *The Planning Act*, and a second amendment dealing with site plan control was being considered for introduction at the time of writing.

A draft of a new Planning Act is being prepared for early distribution so that it can be seen how the government position will be put into law. It is one thing to read abstract statements on planning issues and quite another to try to visualize how they might be worded in actual legislation. The draft bill should bring the rationale of the changes set out in the White Paper into sharper focus.

Summary of Major Conclusions

This summary is an abbreviated version of the main conclusions in the White Paper. Some conclusions have been shortened and others have been omitted. Anyone wanting a fuller understanding of the changes to *The Planning Act* should refer to the main text.

THE PROVINCIAL ROLE

- The province's interests in municipal planning will be broadly identified in *The Planning Act*, and these defined interests will be elaborated on in regulations, policy circulars and planning guidelines. The Ministry of Housing will expand its advice and assistance to municipal governments on local planning matters.

- Delegation of the Minister's authority under *The Planning Act* will be broadened so that some powers, particularly approval of plans of subdivision, can be delegated to qualifying counties and cities outside the restructured upper-tier municipalities.

- Criteria will be published setting out the conditions that must be met for a municipality to qualify to receive a power delegated by the Minister of Housing.

- Provincial involvement in municipal planning will continue primarily through the approval of overall municipal plans and through the monitoring and call-in of delegated planning powers. All amendments to official plans will be submitted to the Minister but he will be enabled to waive the need for his approval where no provincial interests are involved.

- In exercising his approval or call-in powers, the Minister of Housing will examine an official plan or delegated planning power only in the context of defined provincial interests and/or policies.

- When referring any planning matter to the Ontario Municipal Board, the Minister of Housing may designate specified matters as being of provincial importance. In such cases, the Board will conduct a hearing and recommend back to the Minister for a final decision.

- The Minister's zoning order powers will be expanded to permit him to delegate responsibility for their administration to a municipal council or, in northern Ontario, also to a planning board. Basic land use controls will be placed on areas that lack them or where the Minister has determined that existing controls are inadequate.
- The programs and actions of the provincial government will continue to be exempt from municipal planning controls, and major undertakings will remain subject to *The Environmental Assessment Act*.
- Under stated conditions, the Minister may cause an official plan to be amended.

THE MUNICIPAL ROLE

- *The Planning Act* will place the responsibility for local planning authority in the first instance with the municipal council.
- Existing defined planning areas as the formal unit for municipal planning and the statutory role of planning boards will be eliminated.
- Joint planning will be recognized as a voluntary activity of two or more local municipalities. All existing joint planning areas and boards will be dissolved but may be reconstituted under the new legislation.
- Where a city or separated town, and a county or municipality within a county want to engage in joint planning, the Act will enable them to do so without the need for the Minister of Housing's approval.
- Planning authority will be assigned or delegated to municipal councils as follows:

  Authority to prepare and adopt official plans and amendments will be assigned directly in the Act to all municipal councils, including county councils.

  Approval of official plans of lower-tier municipalities will be delegated to qualifying upper-tier municipalities.

  Subdivision/condominium approval powers will be delegated by the Minister to councils of regions, restructured counties, the District of Muskoka and Metropolitan Toronto, and outside the above areas to councils of counties and cities and to appointed planning boards in northern Ontario.

  Land severance approval powers will be:
  Assigned to councils of regions, restructured counties, the District of Muskoka and Metropolitan Toronto, and outside these areas to councils of counties and cities.
  Delegated by the Minister under special circumstances to some municipalities and appointed planning boards in northern Ontario.

  All local councils will be assigned the following:
  General zoning powers
  Site plan control powers
  Granting minor variances to zoning by-laws
  Community improvement (redevelopment) powers
  Maintenance and occupancy by-laws.

- **Municipal councils will have the option of delegating specified planning functions to a committee of council, a municipal official, or other appointed committee.**

TWO-TIER PLANNING

- **The province will continue to recognize regions and restructured counties as a senior level of local government with additional planning interests to those of a single municipality. Similarly, unrestructured counties will be encouraged to assume responsibility for county-scale planning and, where such operations exist, may qualify to receive delegated powers.**
- ***The Planning Act* will include a list of functions common to all upper-tier municipalities.**
- **The Act will require that local planning instruments must conform to upper-tier official plans.**

NORTHERN ONTARIO

- **The Minister of Housing will remain responsible for administering planning programs in areas without municipal organization, with the option of delegating any of his administrative responsibility to a planning board of local residents appointed annually by him.**
- **Where two or more organized municipalities in northern Ontario want to co-operate in planning, the Act will enable this to still be done, but on a voluntary basis without the need for approval by the Minister of Housing.**
- **Where joint planning is desirable in a partly organized and partly unorganized area, the Act will retain the provision to allow the Minister to designate a "joint planning board" for such an area.**
- **The Act will enable the Minister of Housing, or his delegate, to prepare an official plan for any defined parts of unorganized areas.**
- **The province will retain its authority to impose orders either under *The Public Lands Act* or under *The Planning Act*.**

OFFICIAL PLANS

- **The term "official plan" will be retained to describe plans adopted under the Act requiring the approval of the Minister of Housing.**
- **The preparation of an official plan will not be made mandatory under *The Planning Act* for municipalities to exercise zoning powers. However, municipalities must have an official plan to qualify to receive any powers delegated by the Minister, and must have specific official plan policies in order to exercise certain planning controls.**
- **Where an official plan makes provision, secondary plans may come into effect without provincial approval, but they will be required to generally conform to the official plan.**
- **A policy circular will be issued to assist municipalities in defining the various types of official plans which may be produced in relation to municipal circumstances.**

- The official plan will be regarded primarily as a document setting out policies to guide the physical development of a municipality, while taking into account the possible social, economic and environmental consequences.
- The Act will stipulate that official plans must establish the basis for the specific planning actions a municipality proposes to carry out.
- The principle of legal conformity will be maintained, but by-laws and public works will be required only to "generally conform" to an official plan.
- The Act will require that municipalities review their official plan policies within 5 years to ensure they are still appropriate.

SUBDIVISION OF LAND

- The current process of dividing land either by a plan of subdivision or by a land severance will be retained but improved.
- The existing provisions allowing the setting of conditions that are "advisable" will be replaced by a provision that conditions only be imposed that in the opinion of the Minister or delegate are "reasonably related" to the need for facilities generated by the particular subdivision.
- Existing provisions regarding the acquisition of open space will be retained but revised to allow a municipality to require the conveyance of a maximum of 2% of the land in an industrial or commercial subdivision for parkland purposes, or cash-in-lieu to this maximum.
- Instead of universal part-lot control, a municipality will be allowed to pass by-laws to apply this control to those subdivisions where it is deemed to be necessary.

ZONING AND OTHER CONTROLS

- The present development control system through zoning will continue to be used for controlling and regulating land use, but it will be improved by grouping the various purposes for which zoning by-laws are used under long-term controls, short-term controls, and site plan controls.
- A *long-term* zoning by-law will be used to provide certainty and predictability, to zone existing uses that are expected to be stable and enduring, and to prezone lands where future uses have been firmly established. The Act will authorize municipalities to enact holding provisions to control the phasing of development and redevelopment and to award bonuses to density or use in return for meeting a policy objective prescribed in an official plan.
- *Short-term* zoning provisions will enable municipalities to enact an interim control by-law to temporarily constrain development in an area until new or revised development policies are prepared, and to zone land for temporary uses for 3 year renewable periods.
- At the time of writing this White Paper an amendment to *The Planning Act* was scheduled for early introduction to clarify the manner in which *site plan controls* can be used by municipalities.

- To ensure that a municipality does not deliberately permit its zoning by-law to become outdated, the Minister may direct a municipality by order to review its zoning by-law and to make such necessary changes as are specified.
- Amortization of non-conforming uses of land, and buildings incidental to the use, will be authorized under the Act up to a maximum of 5 years, renewable for further 5 year periods.
- The present enforcement provisions on by-laws will be improved to permit right of entry after obtaining a court order, and to increase penalties for contravention.

PUBLIC INVOLVEMENT

- The Act will indicate general public involvement requirements for the formulation of official plans, but will not state specific procedures to be used by municipalities. A municipality must ensure that the public is aware a plan is being prepared, what matters are proposed to be included and how representations can be made.
- When an official plan is submitted to the Minister for approval, the Act will require the municipality to make copies available for public inspection and indicate a specified period of time within which objections to the plan may be made to the Minister.
- Regulations will prescribe procedures for circulation of planning applications, indicating the agencies to which a specific type of application must be circulated and those which may be circulated at the discretion of the approving authority. Agencies must respond within 30 days unless an extension is agreed to by the approving authority and the agency requesting the extension.
- Regulations will prescribe public notification procedures for official plans, zoning and other by-laws passed under *The Planning Act*, as well as variance applications and redevelopment plans. Subdivision plans, severance applications and site plan control applications shall be exempt from public notification.
- Regulations will prescribe procedures for municipal meetings at which the public may make representations on any planning matter about which they have been formally notified. The regulations will be exempt from the provisions of *The Statutory Powers Procedures Act*.
- Regulations will prescribe procedures by which appeals against municipal decisions can be made. Only those persons who attend the public meeting and register their name with the municipal clerk, or any agencies consulted, will be automatically afforded the right of appeal and in doing so must state their reasons in writing.

THE ONTARIO MUNICIPAL BOARD

- The Ontario Municipal Board will become an appellate agency which hears appeals against decisions of municipal councils on planning matters.

- **The OMB will assume that the approving authority's decision is appropriate unless proven otherwise to the Board's satisfaction. The Board's procedures will be changed to require that, under normal circumstances, objectors will be the first to present cases at Board hearings.**
- **Anyone who has not established, or been granted, a formal appellant status may continue to make representations at a hearing but not call support witnesses.**
- ***The Ontario Municipal Board Act* will empower the Board to examine the *issues* of an appeal, rather than to consider all the *merits* of a matter before it. The Board will establish the issues that will be the subject of the hearing and once established, parties to the appeal will be prevented from introducing new issues unless the Board grants them permission.**
- **The Ontario Municipal Board will be empowered to dismiss an appeal if, based on the information before it, the grounds of appeal are insufficient. Similarly, on the basis of the evidence and with the agreement of all parties, the Board may settle an appeal without holding a hearing.**
- **As a way to discourage frivolous or irrelevant objections, *The Ontario Municipal Board Act* will be clarified to permit the Board to levy costs against persons who have caused a Board hearing that they do not attend.**
- **In order to reduce unnecessary hearings, persons who want to appeal consent or minor variance decisions must first seek leave to appeal from the Board.**
- **Except where a planning matter has been designated by the Minister as being of provincial concern, the Ontario Municipal Board's decision on planning matters will be final. Petitions to Cabinet on such matters will not be permitted.**

DEVELOPMENT STANDARDS AND REQUIREMENTS

- **The Act will authorize the Minister to prepare regulations governing development standards and to continue to review the appropriateness of municipal planning standards.**
- **Municipalities will be prohibited from passing zoning by-laws that have exclusionary effects. The number of people living in a dwelling will be regulated only by occupancy standards although some special residential facilities may be exempted.**
- **A maximum charge for all municipal planning fees will be prescribed in regulations.**

LAND FOR PUBLIC USE

- **The present legal position on the payment of compensation will remain unchanged. Recourse to the courts and the OMB will continue to be available to landowners affected by municipalities that act in an arbitrary or unfair manner or in bad faith.**

- **Municipalities will be authorized to zone land required for public purposes for a period of up to 3 years, extendable for another 3 year period. The zoning by-law will show both the future public use and an alternative private use which will automatically come into effect on the lapsing of the time period if the land has not been purchased for its intended public use.**
- **The price of land to be conveyed for public purposes, or the price to be paid in-lieu-of dedication of land, will be based on its value immediately prior to the date of draft approval of a subdivision plan, or immediately prior to the date of the passing of a zoning by-law authorizing the development.**

OTHER PROVINCIAL LEGISLATION

- **Most private development proposals will be subject only to *The Planning Act*. *The Environmental Assessment Act* will be applied only to major private undertakings that are designated by Cabinet.**
- **For private undertakings designated under *The Environmental Assessment Act*, any related approvals required under *The Planning Act* will become the responsibility of the approving authority under *The Environmental Assessment Act*. No hearing before the Municipal Board will be required and such proposals will be subject to only one comprehensive hearing.**
- **Where a public undertaking is subject to *The Environmental Assessment Act* and also requires approvals under *The Planning Act*, the same "streamlining" arrangements will apply.**

I: History and Background

1 The Review Process

1.1 This government White Paper is the culmination of a municipal planning review process that actually began more than ten years ago.

1.2 In 1967, The Ontario Law Reform Commission published the first of several reports[1] that formed the first reasonably detailed study of municipal planning in Ontario since *The Planning Act* was passed in 1946. Among the report's main recommendations were:

- that the province should be able to directly undertake planning initiatives itself
- that approval of subdivision plans and consents to land separation should be delegated to local municipalities
- that a development permit system of land use control should be introduced.

1.3 Subsequent studies by the Commission[2] recommended the merging of zoning and subdivision processes into a single system of development control and the introduction of specific site plan controls. In 1973, Section 35a of *The Planning Act* was introduced allowing municipalities site plan review powers along the lines of the Commission's recommendations.

1.4 In 1972 the Legislature's Select Committee on the Ontario Municipal Board[3] reviewed the entire range of OMB responsibilities but found it was unable to recommend basic changes in planning procedures in the absence of a comprehensive review of the entire municipal planning process.

1.5 The other key study in the sequence of events leading to the appointment of the Planning Act Review Committee was *Subject to Approval*,[4] a report on municipal planning published by the Ontario Economic Council in 1973. Among the main changes proposed in this wide-ranging report were:

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1 Milner, J.B., *Tentative Proposals for the Reform of the Ontario Law Relating to Community Planning and Land Use Controls*, Ontario Law Reform Commission, 1967.

2 Milner, J.B., *Development Control: Some Less Tentative Proposals*, Ontario Law Reform Commission, 1969 and, Ontario Law Reform Commission, *Report on Development Control*, 1971.

3 Province of Ontario, *Report of the Select Committee on the Ontario Municipal Board*, 1972.

4 Ontario Economic Council, *Subject to Approval: A Review of Municipal Planning in Ontario*, 1973.

- establishing a statutory hierarchy of provincial, regional, municipal and secondary plans
- requiring provincial approval only of primary municipal plans where local planning capability exists
- delegating responsibility to prepare official plans and grant consents directly to municipal councils rather than planning boards and committees of adjustment or land division committees
- delegating subdivision plan approval to regional and other qualified municipalities
- instituting a development permit system to replace zoning in designated areas
- hearing of planning appeals by provincial inspectors reporting to the Minister (in place of the OMB)
- increasing the use of regulations on rights of public appeal, and limiting use of impost fees and subdivision conditions.

1.6 Some major actions taken by the government since 1973 reflected the recommendations of the OEC report, particularly the delegation of subdivision approval authority to regional municipalities.[5] Municipalities also were empowered to secure parkland related to population density in certain circumstances, financial grants were initiated for the preparation of municipal plans and guidelines (without legal force) were issued on various subjects.

1.7 When the Ministry of Housing was formed in 1973, it was given responsibility for the government's activities in both housing and municipal planning. By now it was becoming increasingly clear that the overall review of municipal planning called for in earlier reports was needed more than ever.

1.8 Although the 1946 Act was still working reasonably well, the shift in community and social values that had taken place in the intervening years was simply not reflected in legislation. Environmental issues had entered the rising public debate on planning matters. There was a demand for more meaningful public involvement in the making of planning decisions, and at the municipal level, a higher level of planning capability was being demonstrated.

1.9 Against this changing backdrop the Planning Act Review was initiated in 1975 with the appointment of a three-man Committee chaired by Professor Eli Comay of York University, formerly Commissioner of Planning for Metropolitan Toronto and a planning consultant since 1966. Joining him were Dr. Earl Berger, a consultant in community organization and urban affairs, and Mr. Eric Hardy, a management consultant specializing in problems of local government. Professor Dennis Hefferon of Osgoode Hall Law School, York University, was appointed as the Committee's legal counsel.

1.10 The Planning Act Review Committee[6] was asked to review the nature of municipal planning in Ontario to determine what it should be directed towards, to define the roles of the different levels of government in the planning process, and to look at the legislative framework, administrative procedures and regulatory mechanisms that are at the centre of the present system.

[5] See Appendix A.

[6] Future references to this Committee will be abbreviated to PARC.

1.11 PARC began its task by asking for submissions to help identify the concerns of municipalities, planning boards, committees of adjustment, land division committees and school boards. Several research studies were commissioned on the operation of municipal planning, on municipal planning and the natural environment, on public participation in the preparation of municipal plans, and on planning in small communities. These were all published as background papers to the PARC report.

1.12 PARC also held meetings across the province with representatives of municipal bodies and other interest groups. In one series it met with developers, builders and realtors and in another with planners, engineers, lawyers, architects, surveyors and land economists. Separate discussions were held with agricultural organizations. Finally, a series of meetings was held with municipal representatives, both appointed and elected.

1.13 PARC also provided assistance to the Community Planning Association of Canada (CPAC) enabling them to hold a series of general public meetings. Fifteen "citizen workshops" were held in municipal centres across the province, following which a report was submitted to PARC.

1.14 More than 300 briefs were received and these formed a key part of PARC's raw material. The Committee then worked towards the development of specific recommendations for change based on its perception of the nature of planning and the relationships between the various levels of government.

1.15 The PARC Report was published in June, 1977 and distributed widely throughout the province.

1.16 While awaiting public reaction to the Report the Ministry of Housing began to seek the views of other Ministries on the Committee's proposals. An interministry committee was established to discuss the concerns of other Ministries involved in local planning, and Ministry of Housing staff met with representatives of the Ontario Municipal Board to discuss PARC's recommendations on the Board's planning role.

1.17 Meetings were also held with some outside interest groups with particular views on some of PARC's recommendations. Finally, besides carrying out its own evaluation of the PARC Report, the Ministry of Housing commissioned specific studies into some of the Report's recommendations. These are referred to in the chapters that follow, and are available for those who want to consult them (see inside front cover).

2 Public Response

2.1 When the PARC Report was sent out across the province in the summer of 1977[1] it was accompanied by a request from the Minister of Housing for comments. That request brought more than 350 submissions from a wide range of municipal bodies, interest groups and individuals.

Response to PARC Report	
Regional Municipalities	10
Counties	9
Local Municipalities	109
Planning Boards	35
Committees of Adjustment/ Land Division Committees	16
School Boards	55
Conservation Authorities	13
Other Associations	73
Individuals	37
	357

2.2 The overall quality of these submissions has been very high and the implications of some of PARC's recommendations were quickly realized by many people involved in the planning system. An awareness of this response was a key factor in developing the White Paper and drafting the new Act.

2.3 Many public concerns are noted throughout this White Paper and a full analysis of them is available as a separate background report.[2] Still, it is probably useful at the outset to give some impression of the overall response to the PARC report.

2.4 Although many of the principles underlying the Committee's recommendations were generally supported, there are distinct differences of opinion on how or whether some of the recommendations can actually be put into practice.

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[1] A summary of the PARC Report was also published as a special edition of "Housing Ontario".

[2] Province of Ontario, *Analysis of the Response to the Report of the Planning Act Review Committee,* 1979

2.5 PARC's proposed reforms were based on some fundamental principles, the most basic of which were local autonomy and accountability. These were at the heart of major proposals such as a provincial veto and a changed role for the Ontario Municipal Board. Accountability, in particular, was emphasized in requiring policy decisions to be made by elected representatives, that reasons for decisions should be clear and that no level of government should act beyond its own defined interests.

2.6 In general, the response showed more support for the proposals emphasizing local autonomy than those urging accountability. There seems to be a basic conflict though, in municipalities wanting increased planning powers, while being reluctant to assume final responsibility and give up the safeguards in today's system.

2.7 The proposal that provincial involvement in local planning be more closely defined so that the rules of the game are known by all the players was strongly supported. The need for a clearer expression of specific provincial policies and for greater emphasis on "how-to-do-it" guidelines was felt by many to be essential if the province moves away from an approval role to one of advising and assisting municipalities and resolving intermunicipal disputes.

2.8 Although PARC's recommendation that approval authority generally should rest at the local level was heavily endorsed, as was the recognition that planning policy formulation is a political process, there was concern that many councils would simply not be able to cope directly with all the functions proposed for them. Many submissions stressed that municipalities should still be able to appoint committees to help council.

2.9 Municipalities generally agreed that they should have some form of planning policy statement as a condition of exercising statutory authority. In fact, very few submissions wanted to see the official plan lose its legal status as proposed by PARC.

2.10 The most controversial PARC recommendations were those dealing with the Ontario Municipal Board. Although the present appeal and approval functions carried out by the Board were generally defended, there was clear support for changes in the Board's procedures so that the process could operate more efficiently.

2.11 The PARC recommendations on development control, on the other hand, were generally well received, as most submissions agreed it was better to improve the present zoning system than to replace it with a more arbitrary and discretionary system of development permit control.

2.12 On some of the specifics there was agreement, for example, that municipalities should be able to "down-zone" lands without being liable to any compensation for so-called lost development value; that they should be able to reserve private lands for future public use for five years; and that they should not be able to engage in discriminatory zoning practices.

2.13 As the background report on the response points out, the evaluation tends to emphasize the reservations that have been expressed about the PARC proposals and to understate the support. That support, though, particularly for the spirit of the PARC report, was appreciable. The only proposals that seemed clearly unacceptable were those calling for:

- a basic change in the role of the OMB
- municipal councils having to hold "hearings" on planning proposals
- the review of plan policies by each successive municipal council
- the removal of the legal status of official plans.

2.14 While there was substantial agreement with the philosophy of increased local planning autonomy, there was also an unwillingness to go as far as PARC proposed and to opt instead for a more evolutionary process of change. To many people, the PARC report seemed to imply a leap of faith in local government that they were hesitant to take.

3 Principles of Reform

3.1 PARC naturally concentrated its attention on the inadequacies of the present local planning system and, although stating that serious problems exist, it observe that "the municipal planning system in Ontario has by and large produced very good results".[1]

3.2 In developing its concept of who should be doing what in the name of local planning, PARC proposed some far-reaching changes. But in spite of the repeated criticisms of the present system, the public response to some of the recommendations for major change has been surprisingly conservative. The present system is clearly felt to be one that works.

3.3 While strongly supporting many of PARC's underlying principles, the province has concluded that the problems of putting some of the recommendations into practice are simply too great. A danger exists of violating PARC's own objective of avoiding changes that "further complicate or disorganize an already complicated system".[2]

3.4 Before setting out detailed recommendations, the overall provincial position on several key concepts underlying PARC's proposals should be made clear.

A Definition of Municipal Planning

3.5 First and foremost, and basic to the entire White Paper, is the definition of what municipal planning should be. PARC disagreed with those who argue that the total spectrum of municipal responsibilities should be brought under the umbrella of municipal planning and that the planning process and the official plan should become a kind of all-encompassing corporate management exercise. This approach really equates municipal planning with municipal management.

3.6 In rejecting this, PARC argued that the instruments of municipal planning, suitable for dealing with physical development, are inappropriate for dealing with social and economic problems in a direct way. These instruments, largely accepted and proven, such as official plans, zoning by-laws and subdivision control, are all geared toward the regulation of development. They all involve formal legal procedures for issuing approvals and for making amendments because they all affect, in a very real way, personal property rights.

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1 *PARC Report*, p. 15.
2 *PARC Report*, p. 11.

3.7 This limitation, PARC argued, could not be ignored and the system should not be distorted by giving municipal planning a wider horizon just because, in theory, tying all the concerns affecting the life of the community together would make a neater package and allow matters to be dealt with in a supposedly comprehensive way.

3.8 PARC concluded that "municipal planning should be concerned with the physical development of the community, and that its primary purpose is to establish and carry out municipal policies and programs for the rational management of the municipality's physical development. We take physical development to include, by definition, the physical growth of the community, its redevelopment, its stabilization, or even its decline".[3]

3.9 The government agrees with the definition. One of the reasons that the Planning Act Review was commissioned in the first place was because the present system was becoming more and more cumbersome. Decisions on approvals were taking longer, partly because more agencies were being created at both the provincial and local levels, all claiming to have an interest in examining development projects in detail.

3.10 Expanding the scope of municipal planning to embrace social and economic planning would complicate the present system beyond measure. The official plan would become a complex corporate management document containing capital works programs, environmental impact assessments and social analyses. It would be even less intelligible to most of the public than it is now. With its wide range of subject matter, the plan would have to be amended constantly and this would further delay decisions on development proposals.[4]

3.11 The government is aware of initiatives that have been taken in other jurisdictions to broaden the scope of municipal planning. It is also aware of the difficulties that have arisen. It is not convinced that any change should be made to the basic nature of the traditional role of municipal planning in Ontario.

3.12 PARC also commented, though, that "municipal planning should be expected to take account of all the appropriate concerns affecting the life of the community".[5] The government agrees that, in planning for new growth, a municipality has to take into account social, economic and environmental considerations. A neighbourhood cannot be planned just by providing for roads, sewage and water services and a general pattern of land uses. The municipality should know the financial effect of the new development as well as what land will be needed for social facilities such as schools, parks, churches and community centres, and what possible environmental problems might be caused such as erosion or pollution.

3.13 The government, then, supports PARC's proposal that municipal planning must "have regard for" social, economic and environmental concerns in establishing the community's physical development goals, and must "take account of" social, economic and environmental consequences in implementing municipal policies and programs. Within this context, employment distribution, housing mix and similar concerns can reasonably be included as part of the municipal planning exercise.

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[3] *PARC Report*, p. 15.

[4] Further discussion of this matter in relation to the official plan occurs in Chapter 8.

[5] *PARC Report*, p. 15.

Local Autonomy

3.14 The province endorses the principle of providing greater accountability within the local planning system. It also maintains, though, that it should continue to ensure some measure of province-wide consistency by retaining responsibility for overall planning approvals. To that extent, official plans should remain "official".

3.15 The province sees its task as enabling and encouraging as much planning authority and decision making as is practically possible to be transferred to the municipal level. But it rejects the principle of unequivocally assigning specific approval powers directly to municipalities by legislation. There is simply too great a range in the nature of Ontario's municipalities from those that have a strong, proven local planning capacity to those that have almost none.

3.16 The province is mindful that local accountability and autonomy, for its own sake, is not necessarily a progressive step. It can result in fragmentation of authority which, in turn, leads to increased public confusion about who is responsible for what. Further, the Ministry of Housing must be satisfied that municipalities receiving more direct control over their own development exercise it according to satisfactory criteria.

Definition of Interests

3.17 The province agrees with PARC that, wherever possible, the various levels of government should restrict their involvement in local planning to defined interests. However, the concept of a provincial veto[6] of local decisions, as a means of protecting provincial interests, is rejected in favour of a modified form of provincial approval of local actions. Achieving more disciplined involvement in local planning will mean making greater use of guidelines and circulars in order to clarify provincial policies in advance.

3.18 The province will continue to recognize regional municipalities[7] as a senior level of local government responsible for assisting local municipalities and co-ordinating local planning activities. Present policies on delegating planning approvals to the regional level of government will still exist, but delegated authority will also be extended to qualifying municipalities outside areas of restructured local government.

Planning as a Political Process

3.19 The province agrees that municipal planning is by its very nature political and that policy decisions should be made by elected representatives. The statutory role of planning boards will be eliminated in individual municipalities but it will still be possible for voluntary joint planning to take place where two or more municipalities want to co-ordinate their activities. A municipality would also be able to appoint an advisory committee to help to carry out its planning tasks.

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6 See Chapter 4 for discussion of this principle.

7 "Regional municipalities" includes Metropolitan Toronto, the ten regional municipalities, the District of Muskoka, and the restructured County of Oxford.

The Onus of Responsibility

3.20 The province does not agree with PARC that the development of property should necessarily be considered an inherent private right, and that the onus of responsibility should rest solely with government to demonstrate why a particular private development should not proceed. Planning has to be an exercise in balancing private and community rights and any onus of responsibility must be shared between private and public interests.

Public Involvement

3.21 The province agrees with PARC that *The Planning Act* itself should not specify the details of public involvement procedures. Instead, regulations will be prepared setting out requirements for circulation, notification and appeal for specific municipal planning actions.

3.22 The province is aware of the strong support that exists for the planning functions presently carried out by the Ontario Municipal Board. Nonetheless, the government wants to improve the way those functions operate. The changes to be made are designed to speed up the overall process by allowing for better definition of issues to be heard, by placing greater emphasis on the decisions of municipal council, and by improving the procedures to be used, particularly at major hearings.

3.23 Summing up, the province will enable more municipal approval of local actions to take place, and will continue to concentrate more on monitoring local activities so as to protect provincial interests. It will devote more effort to making provincial policies understandable to municipalities. The province recognizes, though, that there will continue to be many areas where local approval will not be practicable for some time and where the provincial presence will continue to be felt much as it is now.

II: Organization for Planning

4 The Provincial Role

4.1 Over the past few years the provincial government's role in municipal planning has gradually been changing from supervising and approving municipal planning actions to promoting greater local planning autonomy, and increasing its advice and assistance programs.

4.2 Partly in recognition of these changes PARC made a number of recommendations aimed at formally defining the province's role. While the government generally supports the basic thrust of these proposals, it does not fully agree with PARC's methods of bringing them into effect.

Definition of Provincial Interests

4.3 The current Act makes no direct reference to the scope of provincial interest and it is difficult for municipalities to pin down at any given time what those interests are.

4.4 PARC recommended that the basis of the province's interests in municipal planning be defined in legislation, and that they should cover essentially:

- achievement of provincial policies and programs in economic, social and physical development
- protection of the natural environment and the conservation and management of natural resources
- maintenance of the provincial financial well-being
- ensuring civil rights and natural justice in the administration of municipal planning
- ensuring that municipalities have adequate resources and a suitable administrative structure to undertake planning
- ensuring co-ordination of planning activities of different municipalities and other public bodies, and resolving planning conflicts between municipalities.

4.5 The public generally supported this proposal, and the government agrees that a list of defined provincial interests should be incorporated into the Act. While such interests would have to be general and, therefore, open to broad interpretation, their inclusion would at least establish a framework within which the province could operate, and establish grounds for government involvement and intervention in municipal planning.

4.6 The interests suggested by PARC are a good starting point with the exception of the one dealing with civil rights and natural justice. Such basic rights in a broad sense can best be safeguarded in other legislation. *The Planning Act* should limit its concern to ensuring that adequate provision is made, in legislation and regulations, for the giving of sufficient notice of proposed actions and adequate opportunity for appeal.

4.7 The province also feels that the statement for ensuring that municipalities have adequate resources to plan should instead make it clear that the provincial interest is to safeguard the economic health of municipalities. PARC's proposal could be construed as a provincial commitment to fund the operation of planning at the municipal level, including the operation of delegated powers. The province does not intend to do this. The provincial interests have also been made more specific than proposed by PARC so as to provide as much guidance as possible to municipalities and the private sector.

Conclusion 1

A general statement of broad provincial interests will be incorporated in the Act to indicate that in reviewing planning applications, the Minister will ensure that provincial physical, economic and social development policies, including the following, will not be jeopardized:

- **the provision of an adequate supply of land for all forms of development**
- **the protection of the natural environment and the management of natural resources**
- **the efficiency and amenity of communities**
- **the protection of features of significant natural, architectural, historical, or archeological interest**
- **the efficient supply and use of energy**
- **the provision of major communication, servicing and transportation facilities**
- **ensuring the equitable distribution of educational, health and other social facilities**
- **co-ordinating planning activities of municipalities and other public bodies**
- **resolving planning conflicts between municipalities and other public bodies**
- **protecting the financial well-being of the province and the economic health of its municipalities.**

Provincial Policies

4.8 Recognizing the general nature of the defined provincial interests, PARC went on to recommend that these interests be further refined. It suggested the development of more detailed provincial policy applied through regulations and other statutory orders, formally adopted by the provincial cabinet, and having the force of law. It also suggested that the province help municipalities in interpreting provincial concerns, and that there be much more emphasis on the publication of provincial policy guidelines and technical and procedural aids.

4.9 In public comments to both PARC and the government, it is obviously widely felt that the province should formalize its policies and make them available so that municipalities can plan more effectively. The government acknowledges these concerns, and agrees that wherever possible, and certainly to a greater extent than in the past, the legislation will be supported by:

- *regulations* issued under the authority of the Act, having the force of law, dealing with such matters as procedures for public notification, hearing and appeal, and for the circulation of planning documents
- *policy circulars,* a proposed new tool through which the Minister will be able to formally declare and publish matters of provincial policy affecting municipal planning. In addition to expressing direct concerns of the Ministry of Housing, it will also be possible for the Minister to publish such statements jointly with other Ministries where a dual concern is identified. Cabinet agreement will ensure that the circulars are binding as provincial policy generally. Municipalities will have to take the policy circulars into account in formulating any planning policy or in deciding on any planning matter. The province will also be guided by their content, as will the Ontario Municipal Board when considering an appeal on any planning matter. In other words, only the specific interpretation of the policy circular and not the policy itself will be open to debate in the review of planning applications
- *planning guidelines* similar to those issued in the past[1], providing technical planning advice and information to municipalities
- *advice and assistance.* As well as increasing the amount of published material elaborating on provincial policy, the province will strengthen its staff advisory functions.

4.10 The regulations and circulars will be published in a format that clearly identifies them as being an official part of the total planning system. Municipalities and other designated recipients will be required to keep these documents on file for public inspection.

4.11 Examples of likely subjects for these communications appear throughout this White Paper. Chapter 17 lists the regulations and circulars to which priority will be given so that they may be available when the new Act comes into force.

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[1] For example — *Parkland for People.*

Conclusion 2

To elaborate on defined provincial interests, the Act will authorize the Minister either independently or jointly with other Ministries, to publish policy circulars. In addition, the legislation will be supported by regulations and planning guidelines. Technical advice and assistance to municipalities will be expanded.

Provincial interest in Good Planning

4.12 PARC recommended that one matter that should *not* be of provincial interest is whether municipalities engage in "good planning" as such. The Committee said that whether planning is good or not depends on whose interests are being served, and that so long as provincial interests are not violated, the matter is really one of local norms and standards.

4.13 Reaction to this view, from both the public and provincial ministries, was mixed ranging from endorsement to grave concern that "bad planning" will occur.

4.14 Good planning is of provincial concern when it reflects on the well-being of the province as a whole. But, rather than defining good planning as a specific provincial interest under the Act, the province will try to prevent bad planning through regulations, policy circulars and guidelines, by the prudent use of its approval and reserve powers, and by advising and assisting municipalities.

Delegation of Planning Authority

4.15 The Act now enables the Minister's approval authority to be delegated to municipalities upon request, and PARC recommended that the onus for such delegation should be reversed. Rather than the Minister *delegating* authority to municipalities, the Committee suggested that any municipality should automatically be *assigned* authority through the Act, and should only be excluded from having such authority when the Minister deems it inadvisable from a provincial standpoint.

4.16 PARC's assignment proposal assumed there should be "the greatest practical degree of planning autonomy at the lowest level suitable", and that residual power, that is, power not specifically defined as being an interest of a higher level of government, should rest at the local level. The Committee was clearly advocating a much wider transfer of authority to local government than is now the case.

4.17 In supporting this, many briefs regarded it as the most significant proposal in the Report. Municipalities particularly the larger ones, seemed willing to accept more responsibilities. There were, however, a number of common concerns:

- the ability of smaller municipalities to carry out planning authority was questioned. The regional/county level was generally felt to be the most appropriate level of assignment
- lack of access to staff and inadequate administrative and financial resources might prevent assignment of authority
- such transfer of authority should be a gradual process on a selective basis.

4.18 There is, then, clear agreement that the transfer of powers should continue and while recognizing a fine philosophical difference in PARC's distinction between assigning or delegating authority, the end result of which municipalities get the authority under either method seems to be the same. But assignment implies that the Minister will have to produce, in effect, a "blacklist" of those municipalities from which powers will be withheld.

4.19 Widespread assignment would cause problems for municipalities that do not have adequate administrative and financial resources, and it could even be seen as running counter to basic constitutional principles. The government then, will continue its policy of delegation rather than assignment.

4.20 The present policy is that powers will be delegated only to restructured upper-tier municipalities.[2] In the future, as a first step, this policy will be extended so that qualifying counties and cities outside of the regions can also receive delegated powers.[3] Should it be later decided to further broaden the extent of delegation, the Minister would do this by means of a policy circular.

4.21 Although some submissions suggested that the province should provide funds to help municipalities administer a delegated power, the government believes that municipalities capable of operating such powers should assume them without requiring aid from the province.

Conclusion 3

The present policy for delegation of Minister's powers under the Act will be broadened so that some powers, particularly approval of plans of subdivision, can be delegated to qualifying counties and cities located outside the restructured upper-tier municipalities.

Criteria for Delegation

4.22 There are presently no published criteria setting out the conditions that must be met for a municipality to receive a delegated power. Up to now power has only been delegated when municipalities have proven to be capable of operating it. In future the province will publish criteria so that municipalities can be aware in advance of what they have to do to qualify. These criteria will draw attention to the special provisions that will apply in parts of northern Ontario.

Conclusion 4

Criteria will be published setting out the conditions that must be met for a municipality to qualify to receive a power delegated by the Minister. The criteria will include:

- **appropriate official plan policies approved by the Minister**
- **permanent professional planning staff**
- **administrative procedures approved by the Minister**
- **municipal financial resources sufficient to operate the delegated power.**

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2 The 10 Regional Municipalities, Metropolitan Toronto, District of Muskoka, and the Restructured County of Oxford. For extent of delegation, see Appendix A.

3 For special provisions on delegation in northern Ontario, see Chapter 7.

Provincial Involvement in Municipal Planning

4.23 One of the most contentious PARC proposals was to change the form of provincial involvement in local planning from supervision and approval to a system of monitoring with a "veto" exercised by the Minister of Housing or Cabinet. The recommendation was based on the philosophy that provincial involvement in municipal planning should not go beyond formally defined interests, so that the province would only intervene to prevent municipal actions which conflicted with provincial interests.

4.24 Response to this proposal varied, although in general, the "veto" was considered unacceptable. Most favoured keeping some form of provincial approval but only for official plans and not other planning instruments. Most agreed that in exercising its approval function, the province should only intervene where a defined provincial interest is at stake, and preferably, where policy has been stated.

4.25 The government rejects the veto concept. Besides being negative and difficult to exercise, both politically and administratively, the veto would largely depend upon the prior adoption of a wide range of provincial policies. This would make the process even more bureaucratic.

4.26 Throughout this White Paper the government stresses the need to improve the planning system by reducing unnecessary provincial involvement and by outlining measures to speed up the decision-making process.

4.27 Insofar as official plans are concerned, the approvals system will be retained but modified rather significantly. As a general rule, ministerial approval will only be required for over-all official plans.[4] All amendments to official plans will still be submitted by municipalities, as they are at present, but the Minister will be able to waive the need for formal approval of amendments that do not affect the provincial interest. The municipality would be quickly notified of this, and the amendment would come into force as soon as the formal notification is received.

4.28 It is believed that this process, while still allowing the province to monitor municipal planning activity, will substantially reduce the time taken for the coming into force of more than half of all official plan amendments.

4.29 In exercising powers of approval or call-in, the province will be confined to examining a plan in the context of the provincial interests defined in the Act and any provincial policies established by Cabinet. The approval of a plan will be equivalent to endorsing the plan as not conflicting with provincial interests.

4.30 These modifications reflect a change of emphasis in the Ministry of Housing's approach over the last few years. The Ministry is now less concerned about the details of the plan and more with making sure that municipal and provincial policies are not in conflict.

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[4] The term "over-all official plans" is used here to mean plans that establish comprehensive planning policies for a whole municipality. For more details on the proposed changes to the form of official plans, see Chapter 8.

4.31 Another way the province becomes involved in municipal planning is through the use of the Minister's power of call-in. This power is not new. Under the present delegation provisions (section 44b), the Minister of Housing may call-in any or all of the matters for which the power of approval has been delegated. For example, the Minister might call-in a specific plan of subdivision application or withdraw entirely the municipal authority to approve plans of subdivision. When call-in is exercised, the Minister re-assumes the approval powers, and the municipality ceases to have approval authority over the specific matter that is called-in.

4.32 It is expected that, if municipalities act wisely, the call-in power will be exercised rarely and only then as a last resort when all else has failed. It would be used mainly where a proposed local action was likely to adversely affect a provincial interest. The call-in will not be used as a substitute for an appeal to the Ontario Municipal Board, which will still be retained.

4.33 No changes will be made, then, to the current provisions whereby the call-in is exercised only by the Minister of Housing on his own initiative, or on behalf of another Minister, or in response to a request from an outside body. The Minister's authority to call-in any delegated power at any time up to the final disposition by a municipal council will also be unchanged.

Conclusion 5

Provincial involvement in municipal planning will continue to take place primarily through the approval (rather than veto) of municipal actions, and through the monitoring and call-in of delegated planning powers.

As a general rule, ministerial approval will only be required for overall official plans. All amendments to official plans will still be received by the Minister of Housing, but the Minister will be able to waive the need for approval where no provincial interests are involved. A notification to waive such approval would not reduce the status or effect of the amendment in any way.

The Minister of Housing will adopt a policy stating that, in exercising approval or call-in powers, the province will be concerned with examining an official plan or delegated planning power only in the context of provincial interests and/or policies.

The Minister would modify a plan primarily where it conflicted with a provincial concern, or would call-in a delegated power only when a municipal council decision could adversely affect a provincial interest.

Call-in would be exercised only by the Minister of Housing directly or at the request of another Minister.

Referrals to Ontario Municipal Board[5]

4.34 If asked to do so, the Minister is presently required to refer an official plan, official plan amendment, subdivision or condominium plan to the OMB When such a referral takes place, the Minister's approval power is effectively transferred to the Board. The purpose of the referral is to enable a hearing to be held whenever objections are raised to a proposed planning matter.

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[5] See also Chapter 13.

4.35 Two issues are involved with this process:

- whether the OMB or the Minister should make the final decision, and
- the criteria on which the Minister bases a decision to refer.

On the first issue, PARC recommended that, on the basis of political accountability, the Board should conduct a hearing and recommend back to the Minister for a final decision.

4.36 This proposal has merit, but only for issues that are of significance to the province. Many matters routinely referred to the Board are *not* of provincial significance and should be settled by the Board itself. There are other matters, however, that *will* be of provincial concern[6]. For these, when referring the matter to the Board, the Minister will designate it to be of provincial importance. The Board will then conduct a hearing and recommend back to the Minister for a final decision.

4.37 On the second issue, the criteria for referral, the Minister is now required to refer a matter to the Board unless the request "is not made in good faith or is frivolous, or is made only for the purpose of delay". This wording is so restrictive that the Minister has little choice but to refer a matter whenever a request is made, because it is almost impossible to know, without holding a hearing, that the request is not in some way genuine. The wording will be changed to give the Minister more discretion in deciding whether to make a referral to the Board.

4.38 PARC recommended that the process would be improved if people had to give written reasons for seeking a referral. This suggestion has been strongly supported and the province agrees with it.

4.39 PARC also recommended that the Minister should be able to ask the Board to hold a preliminary hearing to determine whether a referral is warranted. This proposal has some merit, but has been rejected because it would be too time consuming. Other proposals will help resolve this issue[7].

Conclusion 6

The Minister of Housing, when referring any planning proposal to the Ontario Municipal Board, will be given the power to designate specified parts as being of provincial importance. When so designated, the Board will conduct a hearing into the matter and recommend back to the Minister for a final decision.

To broaden the Minister's discretion on referrals, the current wording of section 44(1) will be amended to state that the Minister, upon request, shall refer a matter to the Board unless, in his opinion, the referral would not serve any useful purpose, or the request is made only for the purpose of delay.

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6 For example, the construction of a new town or development close to a proposed provincial highway route.

7 See Chapter 13 on The Ontario Municipal Board.

Minister's Reserve Powers

4.40 There are times when the Minister needs to directly apply local land use controls. This is done by means of a Minister's zoning order under section 32 of the Act. Applied by regulation, the process is cumbersome and typically "freezes" development so that an amendment to the regulation is needed to permit exceptions to the freeze. Amendments are administered through centralized ministerial machinery which is awkward for securing minor changes. Finally, such orders are simply not flexible enough to be used in every circumstance that arises.

4.41 Zoning orders are presently used for three main purposes:

- in special circumstances where a particular provincial interest must be protected until municipal planning controls can be amended to provide adequate safeguards as in the case say, of developing a new town
- to impose controls in areas where lack of adequate municipal regulations could cause planning problems owing to pressure for growth
- in unorganized parts of northern Ontario where new growth, caused perhaps by the development of a new mine, must be controlled.

4.42 In dealing with the first two situations, PARC recommended that zoning orders continue to be used for emergency purposes, and that to provide a basic minimum level of rural zoning throughout the province, the Minister should be empowered to impose, universally, a "base-level" zoning by-law providing minimum standards.

4.43 The public generally agreed with these proposals. However, although there was widespread support for the need to protect rural land, there was some misunderstanding of PARC's intention that the base-level by-law would only be applied where there are inadequate local land use controls, or no controls at all. The controls were clearly intended as an interim measure to remain in force only until the municipality adopted its own zoning by-law.

4.44 For the third circumstance, in northern Ontario, where there are pressures for development but no municipal organization, PARC proposed that land use control be accomplished through a special "Development Control Order", which would require the issuance of a development control permit before any development could take place.

4.45 The government believes these proposals have merit. Accordingly, the provisions of section 32 in their present form will be used by the Minister only in special emergencies where it is necessary for the province to step in to protect a provincial interest, as has been done in the past. However, separate instruments for universal base-level rural zoning and the special development control order are not really needed. PARC's objectives can, in fact, be met by amending the current zoning order provisions.

4.46 The legislation will enable the Minister to delegate responsibility for the administration of a zoning order to a municipal council or, in unorganized parts of northern Ontario, to a planning board[8]. The Minister will then be able to tailor the zoning order to different planning needs, such as the provision of "base-level" rural controls envisaged by PARC or the control of development pressure in unorganized territory. Once in force, and once the power of administration has been delegated, the order would operate in much the same way as a normal zoning by-law. That is, municipal councils will be responsible for amending and enforcing the orders.

[8] See Chapter 7 for specific recommendations on planning organization in northern Ontario.

4.47 These provisions will be used initially to place base-level zoning controls on those municipalities which now have inadequate planning controls, including, of course, those that have none at all. This would ensure a minimum level of land use control, at least in the municipally organized parts of the province.

4.48 Base-level provincial orders will be prepared so as to take account of differing circumstances in various parts of the province. The orders will indicate the types of uses permitted in specific zones, as well as the general provisions and minimum standards relating to servicing levels for development proposals.

Conclusion 7

The current Minister's zoning order provisions will be expanded to permit the Minister to delegate responsibility for the administration of a zoning order to a municipal council or, in unorganized territory in northern Ontario, to a planning board.

Initially, the Minister of Housing will, by order, impose basic land use controls in areas where existing controls are inadequate, or where no local land use controls exist. When possible, the Minister will delegate responsibility for the administration of such orders to the local level.

Power to Request Changes to Official Plans

4.49 PARC contended that the government should have the power to require municipalities to incorporate into their official plans policies reflecting specific provincial concerns. The few briefs commenting on this proposal agreed.

4.50 The government also agrees. In the past, it has only been possible to incorporate provincial policies into official plans when a new or revised plan has been submitted to the Minister for approval.

4.51 In attempting to apply zoning orders the Minister's efforts have often been nullified because the Act states an order must conform with an official plan. In such cases the Minister should be able to also cause an official plan to be amended to bring it into conformity with provincial policy.

4.52 As with the Minister's power to apply zoning orders, this provision will be used only in exceptional circumstances.

Conclusion 8

The Act will provide the Minister with the power to request any municipality to incorporate into its official plan any matter specified by the Minister. Where a municipality fails to amend its plan within a specified time period, the Minister may cause the plan to be amended.

Crown Rights: Exemption of Provincial Facilities

4.53 PARC recommended that the establishment of certain provincial facilities, such as LCBO outlets and office buildings, be subject to normal municipal planning controls since specific sites are not necessary for locating them. On the other hand, facilities that are location-specific, such as correctional institutions and highways, should remain exempt, but the province should have to consult the municipality before going ahead with them.

4.54 The public favoured this recommendation, and some briefs stated that *all* provincial facilities should be subject to municipal planning controls.

4.55 The government, however, has concluded that these recommendations should be rejected. All major provincial facilities and works are now subject to review under *The Environmental Assessment Act*. To have a proposed provincial facility also subject to the municipal planning process would create unneccessary duplication. A regulation will be issued under *The Planning Act* which will require provincial ministries to consult with a municipality prior to carrying out any public works, or locating any provincial facility, and to take municipal planning policies into account.

4.56 Ontario Hydro is not presently exempt from municipal controls, but its works are subject to *The Environmental Assessment Act* in the same manner as major provincial public works. In keeping with the proposals to avoid unnecessary duplication between the planning and environmental assessment process[9], Ontario Hydro undertakings will in future be exempt from municipal planning controls, but Ontario Hydro will be required to consult with municipalities prior to taking specific actions.

Conclusion 9

The programs and actions of the provincial government will continue to be exempt from municipal planning controls, and major undertakings will still be subject to *The Environmental Assessment Act*. This exemption will be extended to include Ontario Hydro.

Regulations will be issued under *The Planning Act* requiring provincial ministries and other public agencies, including Ontario Hydro, to take municipal planning policies into account in developing their own programs and to consult with affected municipalities before carrying out any provincial undertaking.

Inter-Regional Co-ordination

4.57 PARC recommended that permanent inter-regional planning committees should be established, at least in the greater Toronto-Hamilton area, and perhaps in other areas as well. It was suggested that the committees be composed of regional councillors, representatives from provincial ministries, and municipal representation on an adhoc basis. The Robarts report[10] advocated establishing a permanent Toronto Region Co-ordinating Agency with wider powers and responsibilities than envisaged by PARC.

4.58 Although there was almost unanimous public agreement with the PARC proposal, some submissions urged that if such an agency were established, it should not take the form of the authority proposed by the Robarts Commission.

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9 See also main proposals on *The Environmental Assessment Act* in relation to *The Planning Act* in Chapter 16.

10 Province of Ontario, *Report of the Royal Commission on Metropolitan Toronto*, 1977.

4.59 In its response to the Robarts report, the government rejected the proposal[11], stating that no new inter-regional committee should be established, but that the existing Toronto-Centred Co-ordinating Committee and its affiliated committee of officials should continue to perform a co-ordinating and information-exchange role.

4.60 The government position has not changed. The principles behind the PARC recommendation are commendable, but to statutorily recognize such inter-regional bodies would, it is felt, create yet another level of government. Existing groups, such as the TCCC mentioned above, can be used to perform the role envisaged by PARC, and other committees can be established as the need arises without having to formally provide for them in legislation.

Conclusion 10

Inter-regional planning co-ordination will continue to be voluntary, through existing inter-regional committees and through ad-hoc committees as needed.

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[11] Ministry of T.E.I.A., *Government Statement on the Review of Local Government in the Municipality of Metropolitan Toronto,* May 4, 1978.

5 The Municipal Role

5.1 The previous chapter set out the role of the province in municipal planning in terms of its constitutional responsibility. Yet the real strength of Ontario's planning system rests where the day-to-day decisions are made — at the municipal level. This chapter describes how the local role will be reinforced. It should be clear that the conclusions reached do not relate in all instances to northern Ontario where the absence of counties, or in some cases, of any local government at all, requires the development of special provisions[1].

Political Accountability

5.2 One of the basic principles established by PARC was that policy decisions should be made by the people elected to make them, and that those so elected should be accountable for their decisions. PARC proposed that authority for local planning actions should rest in the first instance with the elected municipal council and not with appointed bodies such as planning boards, committees of adjustment or land division committees.

5.3 Public response strongly supported this concept, but some concerns were expressed. Municipalities in particular favoured more planning autonomy, but many were reluctant to accept final responsibility for their actions and favoured retaining some of the present safeguards, especially the Ontario Municipal Board.

5.4 The government supports the principle that planning authority must rest directly with the elected municipal council.

Conclusion 11

***The Planning Act* will place the responsibility for local planning authority in the first instance with the municipal council.**

Planning Areas and Planning Boards

5.5 Today a municipality that wants to prepare an official plan must first be designated as a "planning area" by the Minister and appoint a planning board. Yet any municipally can adopt and administer a zoning by-law without being formally defined as a planning area and, therefore, without having an official plan to guide its decisions.

[1] See Chapter 7.

5.6 PARC saw statutory planning areas as the product of a past era when an appointed planning board was usually the driving force behind municipal planning. This concept is in direct contrast to PARC's basic premise that planning authority should rest with the elected municipal council. As a result, PARC recommended that defined planning areas no longer be required and that planning powers be exercised directly by municipal councils. Surprisingly perhaps, not one objection to this proposal was received, although there was support for allowing some form of committee to assist council by advising it on planning matters or undertaking public meetings.

5.7 The government agrees. In fact, in all legislation creating regional or restructured governments since 1970, the elected council is designated as the planning board for the purposes of *The Planning Act*. In revising the Act, this principle is being extended to local government in general. However, as discussed later in this chapter, municipal councils will be able to delegate some of their planning functions.

Conclusion 12

The statutory role of planning boards will be eliminated. The defined planning area as the only formal unit for municipal planning will also be eliminated.

Joint Planning

5.8 PARC highlighted some of the problems with the current joint planning system and concluded that joint planning is successful only on a voluntary basis. It recommended that the practice of defining joint planning areas be abandoned, and that inter-municipal co-ordination be provided through voluntary joint committees of council. Response to these proposals suggests that where joint planning is producing results, it has local support — or perhaps, more accurately, where it enjoys local support, it is producing results. The system *has* worked effectively in some areas.

5.9 The government is aware that a good many joint planning boards created over the past 30 years are no longer active. In recent years the Minister of Housing has only formed joint planning areas where there has been a genuine local desire for a joint organization and a firm commitment to finance and carry out an implementing program.

5.10 The province also agrees that to abolish the entire joint planning system simply because some boards have been ineffectual is not justified. Clearly, support exists for continuing some form of voluntary planning by a group of municipalities.

5.11 In supporting voluntary joint planning by elected persons, PARC also recommended that "maximum use should be made of the governmental structure that is already available for this purpose, the existing county governments"[2]. PARC went on to note the growing county planning activity in southern Ontario.

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2 *PARC Report*, page, 55.

5.12 The government supports this trend and will continue to encourage voluntary area-wide (or joint) planning at the county level. Any two or more municipalities within a county will also be able to plan jointly, and will be encouraged to work with the county in defining their programs. There will, however, no longer be any provincial approval needed to establish a joint planning program. Participating municipalities would simply have to inform the Ministry of Housing that a joint agreement to plan had been reached. Existing joint planning boards could continue in operation for a maximum of one year, or until a new board made up of elected representatives is constituted for any part of the former joint planning area. Existing joint plans would remain in effect until repealed or incorporated into the program for a new joint planning area.[3]

Conclusion 13

Joint planning will be recognized in the Act as a voluntary activity of two or more municipalities.

The composition and terms of reference of any joint board will be agreed upon by the participating municipalities. The board will consist of elected persons appointed by the respective municipal councils and will set budgets, hire staff and carry out planning tasks assigned by the councils, including the preparation of an official plan.

All existing joint planning boards will be dissolved one year after the new legislation comes into force, or upon formulation of a new joint board for any part of the former joint area. There will no longer be a "designated municipality".

5.13 Cities and separated towns are not parts of counties for municipal purposes, but they may wish to plan jointly in some instances with part or all of a county. The Act will enable this to be done, again without the need for any formal provincial approval.

5.14 Some existing planning areas transcend county boundaries (e.g., the Central Rideau Planning Area). This type of joint planning will be able to continue.

5.15 It should be made clear that these arrangements for joint planning, purely on a voluntary basis, have no effect on the power of any single municipality participating in such a joint arrangement to prepare its own official plan and carry out its own independent planning program.

5.16 Thus, it will be possible under the new legislation, as it is now, to have a municipality covered by two official plans. The joint plan would deal with general policies, such as the granting of consents, common to all of the municipalities within the joint area. The independent plan would cover a single municipality and would be more specific. Its policies would deal with such matters as the overall land use pattern, rates of growth and servicing programs.

5.17 The Minister of Housing, in considering these plans for approval, would have to ensure that none of the policies were in serious conflict.

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[3] See Chapter 7 for special joint planning provisions in northern Ontario.

Conclusion 14

Where a city or separated town, and a county or municipality within a county want to engage in joint planning, the Act will enable them to do so without the need for the Minister of Housing's approval.

The Act will also allow joint planning for areas partly within different counties.

Municipal Council Responsibilities

5.18 It was indicated earlier that PARC's proposal for municipalities to be assigned the final authority over *all* municipal planning instruments has been rejected in favour of expanding the delegation of the Minister's authority, such as approval of plans of subdivision. Other planning powers, of zoning and granting minor variances, have long rested at the municipal level. This will continue with primary authority being assigned to the municipal council.

Conclusion 15

Planning authority will be assigned or delegated to the various levels of local government as follows:

- **the authority to prepare and adopt official plans and amendments will be assigned directly in the Act to all municipal councils, including county councils**
- **powers to consent to land severances will be assigned to:**

  councils of regional municipalities, restructured counties, the District of Muskoka and Metropolitan Toronto

  outside these areas to the councils of counties and cities
- **the following powers will be assigned to all local councils:**

  general zoning powers
  site plan control
  granting minor variances to zoning by-laws
  community improvement (redevelopment) powers
  maintenance and occupancy powers
- **qualifying upper-tier municipalities (regional municipalities and counties), and cities outside restructured municipalities will, when delegated, have the power to approve plans of subdvision and condominium. Qualifying upper-tier municipalities also will have the power, when delegated, to approve official plans of lower-tier municipalities.**

Delegation by Council

5.19 Although responsibility for planning will rest directly with municipal council, the government knows that it cannot expect every entire council to participate in every detail of the planning process. The heavy time demands on councillors alone would prevent this, even if it were desirable.

5.20 The full council should concentrate on formulating overall development *policies* for the municipality, and should be able to delegate the administration of day-to-day matters, within a clear policy framework, to a committee or staff member directly responsible to council.

5.21 The public response almost unanimously agreed with PARC that elected councils should have the power to delegate to council committees and, for specified powers, to staff or appointed committees directly responsible to council. The government accept these proposals and will give councils the discretion to delegate such powers as consent and subdivision approval that implement policies established by council in its official plan and zoning by-laws. Council should be free to seek advice and assistance from council committees and citizen advisory bodies, but the actual decisions on official plans and zoning by-laws must rest with council itself.

5.22 The general scope of powers that could be delegated at the discretion of council are as follows:

- delegation of making the final decision on certain instruments under *The Planning Act*, that would stand unless appealed to the Municipal Board, and the holding of any required public meeting. The decision taken by the delegated body need only be reported to council later.
- the Act will state that bodies delegated final statutory authority are acting on behalf of council and so are bound by council policy. Municipalities would be able to delegate final statutory approval authority for land severances, plans of subdivision and condominium, and minor variances that conform to established council policy.[4]
- the authority to give public notice and to hold a required meeting with regard to official plan and zoning matters.[5] Such delegation could be given to a committee of council, which would conduct the meeting and submit a written recommendation to council. Council would then be able to decide on the matter as if it had initiated the notice and held the meeting itself.

5.23 Councils will also be free to appoint a planning advisory body which, at the discretion of council, could hold meetings on planning matters to be decided upon by council or planning committee. This would enable advisory bodies, with non-elected people, to meet with the public and advise council on official plan and zoning matters, much like a planning board does now. Such advisory bodies, however, would not be able to hold a public meeting on behalf of council that was required by statute.

5.24 Section 36 of the Act now provides for a property standards officer to inspect properties in accordance with a municipality's maintenance and occupancy by-law, and for a property standards committee of ratepayers, appointed by council, to hear appeals from orders of the property standards officer. PARC made no major recommendation on this, but the government considers that the current system of maintenance and occupancy by-laws is working well. The Act will continue to provide for the appointment of a property standards officer and committee.

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4 While this will be the common pattern of responsibility, there may be variations, e.g., northern Ontario.

5 See Chapter 12.

Conclusion 16

Municipal councils will have the option of appointing the following bodies or persons and delegating to them specific planning functions:

1. **Councils of regional municipalities and counties:**
   - **a committee of council with final statutory authority for land severances, draft and/or final plans of subdivision/condominium[6] plus statutory powers to hold meetings on behalf of council on official plan matters**
   - **a county or regional land division committee with the final statutory authority for granting land severances**
   - **a municipal official (s) with the final statutory authority for granting land severances and/or draft and final plans of subdivision/condominium.[6]**

2. **Cities outside regional municipalities or restructured counties:**
   - **a committee of council with final statutory authority for land severances, draft and final plans of subdivision/condominium[6] and/or minor zoning variances, plus statutory powers to hold meetings on behalf of council on official plan and zoning matters**
   - **a committee of adjustment with final statutory authority for granting minor zoning variances and/or land severances**
   - **a municipal official (s) with the final statutory authority for granting land severances, minor zoning variances, and/or draft and final plans of subdivision/condominium**
   - **a property standards officer to inspect properties in accordance with maintenance and occupancy by-laws, plus an appointed property standards committee to hear appeals from orders of the property standards officer.**

3. **Area municipal councils within regional municipalities or restructured counties, and other municipalities outside such areas:**
   - **a committee of council with final statutory authority for minor zoning variances plus statutory powers to hold meetings on behalf of council on official plan and zoning matters**
   - **a committee of adjustment with final statutory authority for granting minor zoning variances**
   - **a municipal official (s) with the final statutory authority for granting minor zoning variances**
   - **a property standards officer to inspect properties in accordance with maintenance and occupancy by-laws, plus an appointed property standards committee to hear appeals from orders of the property standards officer.**

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[6] When power has been delegated by the Minister of Housing.

Conditions of Delegation by Council

5.25 To help councils which want to delegate some of their authority to appointed committees and officials, and to ensure some consistency across the province, the Minister will issue a regulation setting out procedures for delegation.

Conclusion 17

A regulation will be issued setting out procedures for delegation of planning authority by councils to appointed committees and officials. The regulation will specify that the terms and conditions of any such delegation must be contained in a municipal by-law that would specify the exact scope of the powers being delegated, the basis upon which an individual item or power may be recalled by council and the procedures to be followed by the delegates.

6 Two-tier Planning

6.1 This chapter focuses on those areas where planning operates not only at the local level but at the county or regional level, whether it be a restructured municipality created by special legislation or a county engaged in planning on a voluntary basis. There are three general groups:

- restructured municipalities with legislative provision for a single level of planning (e.g., Sudbury, Oxford and Haldimand-Norfolk)
- restructured municipalities where planning authority is exercised at both the regional and area municipal level (e.g., Peel, Metropolitan Toronto and Waterloo)
- counties which operate some planning functions as a designated planning area, or have professional planning staff (e.g., Huron, Victoria and Hastings).

The first of these, restructured municipalities with a single level of planning, will operate much like a conventional municipality within the framework established in Chapter 5. The other two require special arrangements.

Status of Upper-tier Municipalities

6.2 PARC thought it "wrong for one branch of municipal government to exercise direct supervisory control over another branch"[1]. It concluded that regions should not approve local planning actions, but rather should ensure that local actions are consistent with defined regional interests. It is not surprising that while many local municipalities supported this proposal, regional municipalities did not.

6.3 The government does not agree with PARC on this point. The restructured upper-tier governments established to date have been assigned a statutory responsibility for regional-wide services, including planning, and they are also the sole level of government to which certain planning approval powers have been delegated, some of which provide for decision-making authority over local municipalities[2]. The government acknowledges the restructured upper-tier municipalities as being a senior level of local government and will continue to do so.

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1 *PARC Report*, p. 64.

2 See appendix A for a list of the current extent of delegated powers.

6.4 Unrestructured counties, while not having the full range of statutory area-wide powers and responsibilities assigned to regions, nonetheless will be considered as a senior level of government to which certain area-wide planning responsibilities can be given. The province will continue to support local government restructuring where local interest is expressed, but in its absence will continue to encourage county-scale planning.

6.5 Two initiatives are proposed. First, as explained in the previous chapter, county councils may plan as municipalities in their own right. Second, delegation of planning authority by the Minister will be extended to qualifying counties, so that they may eventually achieve planning status similar to regions.

Conclusion 18

The province will continue to recognize regions and restructured counties as a senior level of local government with planning interests that extend beyond a single municipality.

Unrestructured counties will be encouraged to assume responsibility for county-scale planning. Where county planning operations exist, counties may qualify to receive delegated powers similar to regional municipalities.

Focus of Upper-Tier Planning

6.6 PARC recommended that the broad range of upper-tier interests be defined in *The Planning Act*, in the same way as *provincial* interests. In both cases this is seen as the basis for senior level involvement in local planning.

6.7 PARC held that regional interests in planning derive from the region's economic and natural resource base, and so consist of providing for the distribution of employment and housing, and conserving and managing agricultural and other natural resources. The upper-tier focus, according to PARC, should be the regional development structure as directed and influenced by the upper-tier municipality's statutory responsibilities.

6.8 PARC also recommended that *The Planning Act* specifically acknowledge planning by upper-tier municipalities, rather than silently assuming that it is simply a variant of municipal planning to which the general provisions apply. PARC went on to say that the Act should define the general scope of planning for all upper-tier municipalities and that any variations should be provided for in individual regional Acts.

6.9 The province agrees with the general response that a clearer understanding of the relationship between the two levels of municipal planning is needed. This involves:

- specific legislative provision for planning by upper-tier municipalities
- definition of planning powers assigned or delegated to upper-tier municipalities
- definition of regional functions
- nature of upper-tier plans
- planning duties common to all upper-tier municipalities.

6.10 In Chapter 5 it was stated that the authority to prepare and adopt an official plan will be assigned directly to all municipal councils, including regional municipalities and counties, so that upper-tier planning will be specifically provided for. Chapter 5 also sets out other planning powers to be assigned or delegated to upper-tier municipalities (subdivisions, condominiums, and consents) and provides for further delegation to council committees, appointed municipal staff and non-elected committees that are responsible to council.

6.11 The problem of defining regional interests in a meaningful way is much more difficult, and it has not been possible to list such interests in the same manner as was done for the province. The crux of the problem is that, except for specific statutory services, most items that could be defined as interests of upper-tier municipalities could equally be taken as local interests. The difference really is one of the *scale* at which the interest is approached. Thus, while both a local and an upper-tier municipality would be concerned about development on or near lands subject to flooding, the local municipality would focus on the proper zoning of the land, while the upper-tier municipality would be more concerned with establishing broader policies that affect the watershed as a whole.

6.12 The same difficulty is encountered in trying to define in legislation the scope and content of upper-tier municipal plans. The differences between the various regions and counties and the mix of statutory responsibilities would result in weak, generalized legislative statements of little real value.

6.13 While more assistance and technical advice will be provided during the preparation of upper-tier and lower-tier official plans (see Chapter 8), the scope and content of such plans will *not* be fixed in legislation.

Conclusion 19

Under the Act, a county or other upper-tier municipality will have the authority to:

- **prepare an official plan for all or part of the county or region**
- **co-ordinate the planning activities of local municipalities**
- **upon request, provide technical assistance to local municipalities in carrying out their planning activities**
- **upon agreement with the municipality concerned, directly carry out local planning functions**
- **appoint such planning committees and staff as it considers necessary**
- **enter into agreements with area municipalities or persons relating to the approval of plans of subdivision and zoning by-laws**
- **carry out planning powers assigned in *The Planning Act* or delegated by the Minister.**

Status of Upper-tier Plans

6.14 PARC held that all bodies making planning decisions, including local municipalities, should be required to "have regard" to upper-tier planning policies. PARC did not propose a hierarchy of plans with a dominant upper-tier and rejected the current legal requirement that local plans conform to the upper-tier plan. Only four responses commented on this legal conformity question and three disagreed with PARC.

6.15 The province has stated, contrary to PARC, that upper-tier municipalities should be recognized as senior levels of local government. Their plans will continue to be recognized as being dominant, so lower-tier plans should continue to be required to conform. Conformity provisions are presently contained in the individual regional Acts, but a general conformity requirement will be incorporated into *The Planning Act*.

Conclusion 20

Upper-tier plans will be recognized as being dominant under *The Planning Act* and lower-tier plans will be required to be brought into general conformity with them.

Zoning and Upper-Tier Plans

6.16 Where an upper-tier plan has been approved, *The Planning Act* should require that all local zoning by-laws be brought into conformity with it. There may be cases where a local municipality fails to do this within a reasonable period. If this happens the upper-tier municipality should be able to exercise zoning authority, much as the Minister can now do under section 32. The power should be restricted to areas with no by-law or where existing zoning provisions are in conflict with the upper-tier plan.

Conclusion 21

The Act will provide that local zoning by-laws must generally conform with any approved upper-tier official plan.

If a local municipality does *not* amend its zoning by-law within one year of the coming into force of an upper-tier plan, the upper-tier municipality may directly exercise local zoning control.

In all such cases zoning may be exercised only in the absence of local zoning or where local zoning conflicts with an upper-tier plan. In all other respects the local by-law will remain in full force and effect.

Upper-tier Planning Responsibilities

6.17 Apart from the existing thirteen restructured upper-tier municipalities required by their special statutes to prepare official plans, PARC saw no need to make the preparation of regional or county plans mandatory. The government agrees. While the Act allows counties to prepare official plans as municipalities in their own right, they will not be compelled to do so[3].

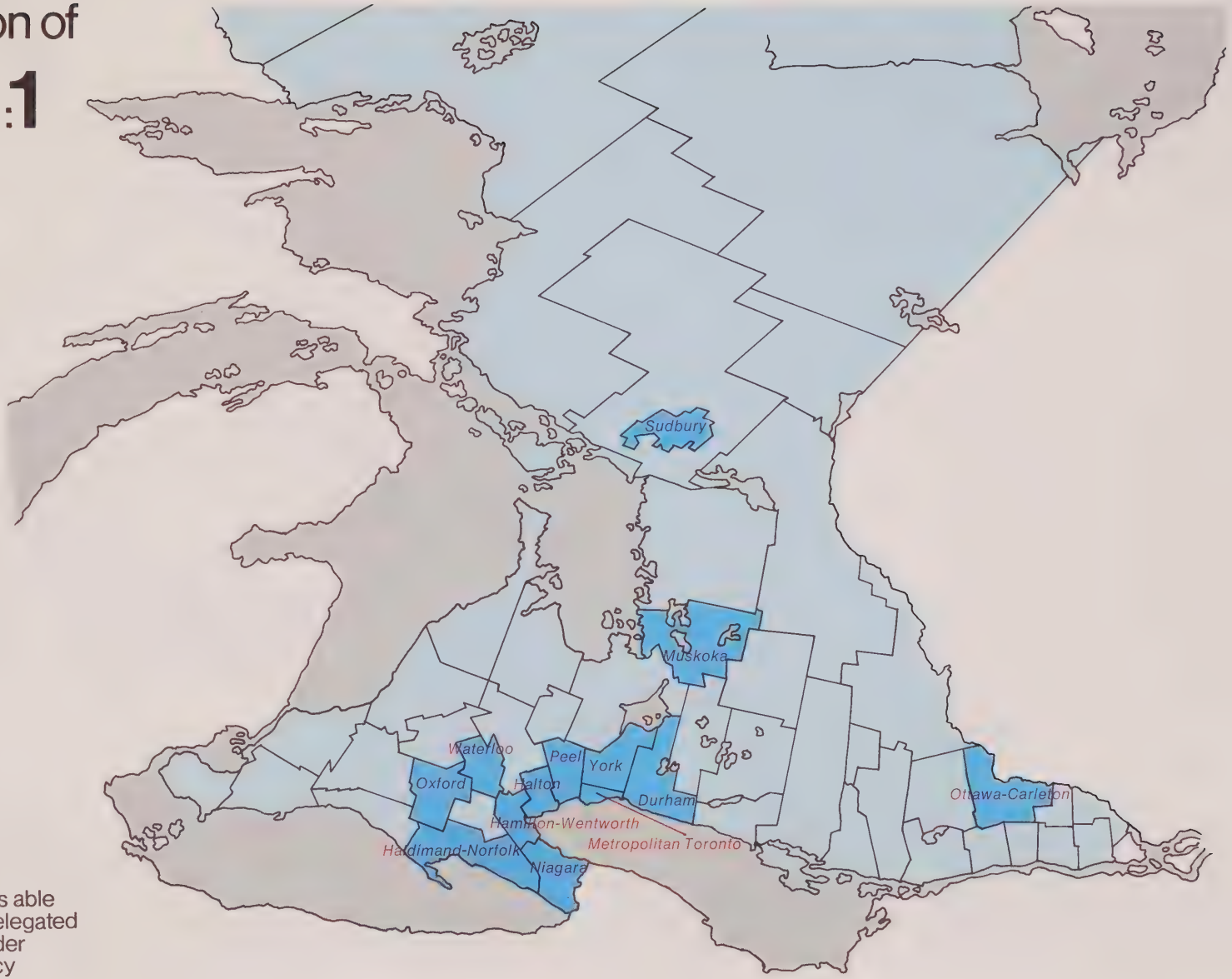
6.18 Other planning powers assigned to upper-tier municipalities, or that may be delegated to them, have already been outlined in Chapters 4 and 5. The upper-tier planning power to zone within 150 feet of a county/regional road under *The Public Transportation and Highway Improvement Act* has never really been used, and the government agrees with PARC that it should be repealed. However, so that upper-tier municipalities can protect their transportation and other interests, they will be authorized to be direct parties to subdivision and zoning agreements.

Conclusion 22

The general power under *The Public Transportation and Highway Improvement Act* for counties and regional municipalities to zone within 150 feet of a county or regional road will be removed. Instead, upper-tier municipalities will be recognized in *The Planning Act* as direct parties to subdivision and zoning agreements.

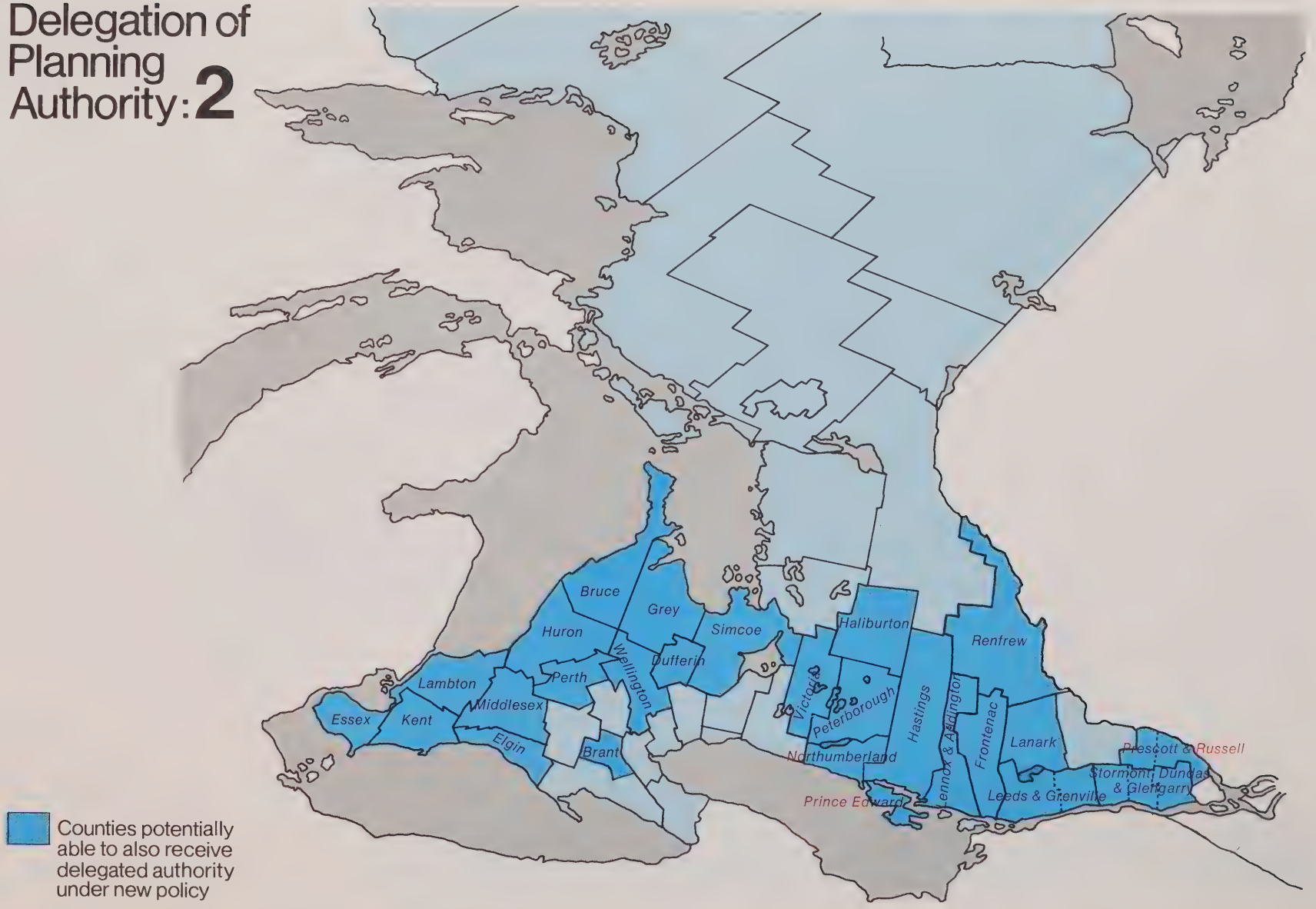
[3] See Chapter 8 for further discussion on mandatory planning.

Delegation of Planning Authority: 1

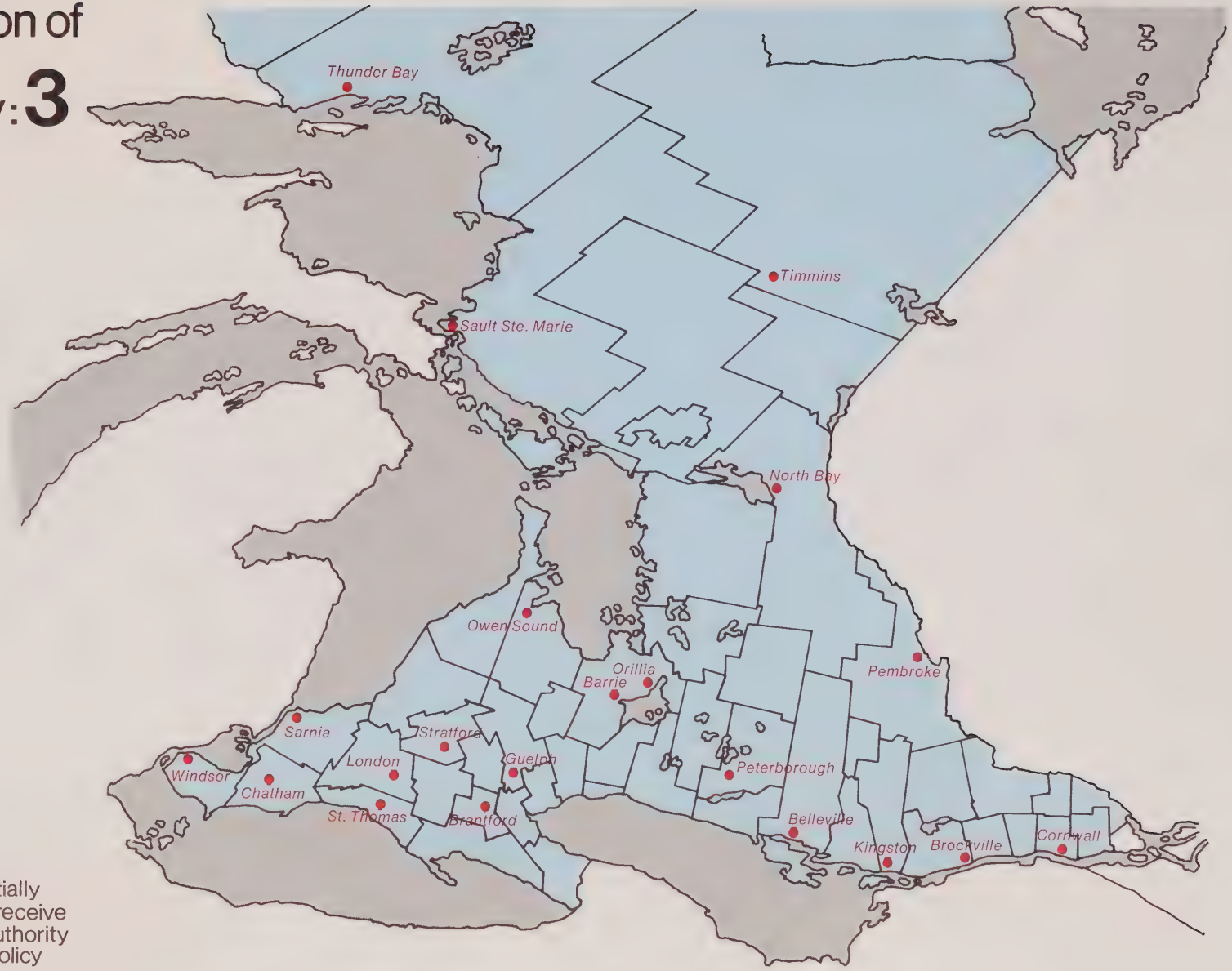


Municipalities able to receive delegated authority under present policy

Delegation of Planning Authority: 2



Delegation of Planning Authority: 3



● Cities potentially able to also receive delegated authority under new policy

7 Northern Ontario

7.1 Although there are 150 municipalities in northern Ontario, most of this vast area has no municipal structure. While the changes put forward in this White Paper will apply to all municipalities in the province, the unique situation in the north where there are both municipally organized and unorganized areas demands special attention. For example, in northern Ontario the provisions for joint planning between two municipalities will be the same as in the south. On the other hand, municipalities in the north presently granting consents, which would not qualify to keep this power under the provision in Chapter 5, will still be able to do so.

Conclusion 23

Although generally the changes put forward in this White Paper will apply to all municipalities in the province, special provisions will be made for northern municipalities which would not normally qualify for delegation.

7.2 PARC proposed significant changes to the development control system now exercised by the government for unorganized areas under section 32 of *The Planning Act* and section 17 of *The Public Lands Act*. Besides these control methods, discussed later in this chapter, PARC recommended that the Minister of Housing continue to administer subdivision and consent authority in unorganized areas, delegating to local planning committees when established.

7.3 Response to PARC's recommendations was varied. It was agreed that the responsibilities of the Ministries of Natural Resources, Housing and Northern Affairs should be rationalized, and that local communities should participate with the province in overall planning. The general consensus, though, was that the province should accept full responsibility for planning in unorganized areas, and the province agrees.

Planning in Unorganized Areas

7.4 At present the province is directly responsible for exercising planning controls in unorganized areas, although the Minister's authority to grant consents may be delegated to a planning board or to a district land division committee appointed by the Minister. Although PARC proposed that elected planning committees eventually be established to administer planning programs, it recognized this would take time. It proposed, as a temporary measure, the appointment of advisory planning committees of local residents until elected committees could be put in place.

7.5 The province does not want to create small elected special-purpose bodies across the north to administer delegated planning powers, but does agree that more should be done to enable decisions to be made locally. To reduce delays and to make the planning process more responsive, the province will provide for the delegation of administrative and approval authority for local planning controls, such as consents and subdivisions, to appointed local planning boards wherever possible.

7.6 There are presently very few official plans in unorganized areas and many decisions on development proposals must be made by the Minister in the absence of any local guidelines. This can lead to inconsistent decision-making, particularly in areas covered by zoning orders, and is likely to be further aggravated when delegation to the local level occurs. The Act will therefore enable the Minister, or delegate, to prepare official plans for defined parts of unorganized areas.

Conclusion 24

The Minister of Housing will remain responsible for administering planning programs in areas without municipal organization and may prepare an official plan for any defined parts of such areas.

The Minister of Housing may annually appoint a planning board composed of local residents for any defined unorganized area and may delegate specific responsibility, including the preparation of an official plan, to such a board.

Joint Planning: Organized and Unorganized Areas

7.7 The government recognizes that in many cases in the north the best way to resolve development problems would be to establish local government. Frequently, this would only mean expanding existing municipalities to include the fringe areas facing development pressure.

7.8 However, in the absence of early local municipal reform, the Act should continue to allow the designation by the Minister of a joint planning board covering organized and unorganized areas, as can be done under the present Act. The Minister would approve the make-up of the joint board and would appoint the members to represent the unorganized area. The council of any municipality included in the board would appoint its representatives from council without the Minister's approval. The Minister would be able to delegate administration of land severances, subdivisions and zoning orders as well as official plan preparation to such a board.

Conclusion 25

The Act will enable the Minister to designate a joint planning board to have jurisdiction over an area that includes both municipalities and unorganized lands.

The Minister will establish the composition of the joint board and appoint the members from the unorganized portion.

In addition to hiring staff and setting budgets, the joint planning board will be eligible to receive planning powers delegated directly to it by the Minister in accordance with the Minister's criteria on delegation.

Development Controls in Unorganized Areas

7.9 Development controls may be applied by the Minister of Natural Resources to specific areas under section 17 of *The Public Lands Act* as well as by the Minister of Housing under the present section 32 of *The Planning Act*.

7.10 PARC identified three main problems with the present system of controls in unorganized areas: *first*, the confusion and misunderstanding arising from the use of two separate control mechanisms administered by two different ministries, *second*, the general lack of public involvement in the process and *third*, the problem of all the controls being administered with almost no planning framework.

7.11 In proposing changes, PARC recommended that unincorporated permanent settlement areas be designated by the government. At the outset, the Housing Minister's section 32 zoning orders would be used in these areas. Once an adequate local planning structure and basic policy guidelines had been established, PARC recommended that the section 32 order be replaced by a new statutory "development control order". In the remaining areas, the Ministry of Natural Resources would continue to administer control through section 17 orders.

7.12 The province agrees with PARC that the system of development control in the unorganized north needs clarifying. One of the main weaknesses is that there is no provision for local involvement in decision-making because day-to-day administration rests solely with the province. The key conclusion of this White Paper for the unorganized north is that the Minister of Housing's planning authority should be able to be delegated to the local level.

7.13 The PARC recommendation that the entire unorganized north be covered by controls through section 17 orders or section 32 orders, to be replaced ultimately by development control orders, is rejected. Such universal coverage is unnecessary because there is simply not enough development to warrant setting up the machinery needed to administer the regulations.

7.14 Chapter 4 retains the current section 32 provisions for use by the Minister only in special circumstances where a particular provincial interest must be protected. They would be used in the unorganized north where warranted by special development circumstances, as is now the case. The Minister would be responsible for administering controls but could delegate this authority to an appointed planning board or joint planning board.

7.15 The Minister of Natural Resources would apply section 17 controls only in specific areas where dispersed development could threaten the resource base. Proposed changes to *The Public Lands Act,* similar to those recommended by PARC, will improve the resource-management capability of the Ministry of Natural Resources and complement the revisions to *The Planning Act.*

7.16 The government believes the changes to zoning orders (see Chapter 4) will make them much more effective in both organized and unorganized areas. A zoning order will become a more flexible control instrument, especially in unorganized areas where unforeseen or unique planning problems arise.

7.17 The opening of a new mine would undoubtedly create immediate pressure for development, often in a previously undeveloped area. Similarly, a decision to expand a saw mill might create a need to revitalize a dormant town. Both situations could lead to indiscriminate and haphazard development if no land use controls were applied.

7.18 In the absence of local government, the Minister must be relied on to apply a zoning order if needed. The order, however, must be flexible enough to both prevent unplanned development while still enabling rapid relaxation of any land use freeze so that development in suitable locations may go ahead. The process would require that an application to amend an order would be submitted to the Minister, or delegate, who would either amend the order authorizing the development or turn down the proposal. The normal requirements of notice, hearing an appeal would apply[1].

Conclusion 26

The province will continue to impose a section 17 order under *The Public Lands Act* or a zoning order under *The Planning Act* only where the Ministries concerned determine that particular local circumstances warrant such an order.

The modified provisions for zoning orders will be used in specific unorganized areas where development activity warrants the imposition of basic land use controls. Responsibility for administering the controls will rest with the Minister, or with the Minister's delegate.

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1 See Chapter 12.

III: Statutory Plans

8 Official Plans

8.1 The Planning Act Review Committee made a number of recommendations on official plans. The most significant of these related to their legal status, whether planning should be mandatory, the scope and content of plans, and procedures for their review.

8.2 PARC recommended that plans should no longer need provincial approval but should be subject instead to veto by the province. On this basis, PARC recommended that the term "official plan", meaning a document with provincial approval, be replaced by the term "municipal plan". Most respondents commenting on this felt that plans should still receive provincial approval, although there was almost no reaction to the proposed name change.

8.3 It was indicated in Chapter 4 that the veto concept is rejected and general provincial approval is being retained. Because of this, the term "official plan" should be kept. It is an accepted term with which people are familiar, and no particularly useful purpose is served by changing it.

Conclusion 27

The term "official plan" will be retained to describe plans adopted under the Act requiring the approval of the Minister of Housing.

Mandatory Planning

8.4 Although PARC advised that preparation of plans not be made mandatory, it also recommended that municipalities not be allowed to exercise any statutory planning authority without a formally adopted planning policy establishing the basis for a given planning activity. In effect, it envisaged an indirect form of mandatory planning.

8.5 Public response to this was somewhat mixed. There was general agreement that no statutory authority should be exercised without some policy base, but there was less agreement over whether the adoption of a plan itself should be mandatory. Some of the confusion probably resulted from the nature of PARC's recommendation.

8.6 The government agrees in principle that the preparation of a plan should not be mandatory. PARC perhaps went too far in requiring policies to be adopted before *any* statutory power could be exercised, even though it did say that these "policies" did not have to be in a fully-fledged official plan.

8.7 It was indicated in Chapter 4 that a municipality must have an official plan in effect to qualify to receive authority delegated by the Minister, and it is proposed later that plan policies will be required to exercise certain planning powers[1]. It does not seem necessary, though, that a plan should always be in effect before a municipality can pass a zoning by-law. Under some circumstances, particularly in rural areas, a basic zoning by-law may be all that is needed. To require municipalities to first prepare an official plan in order to operate such a minimum level of control seems unreasonable.

Conclusion 28

The preparation of an official plan will not be made mandatory under *The Planning Act* for municipalities to exercise zoning powers. However, municipalities will be required to have an official plan to be qualified to receive any powers delegated by the Minister and also to have specific official plan policies before being able to exercise certain special planning controls.

Form of Official Plans

8.8 PARC seriously questioned the assumption that a comprehensive framework is the only basis on which a municipality can or should plan. As an alternative to adopting a comprehensive plan in the usual sense, PARC said that municipalities should be able to adopt individual planning policy statements relating to the specific planning activities they want to engage in. It would then be possible to have a plan that consisted of a single statement setting out the municipality's objectives, procedures and standards, or one or more of a series of statements addressing land use, transportation, open space, and so forth. This recommendation was aimed at removing the need, particularly for smaller municipalities, to plan beyond their real needs.

8.9 Although over 70 per cent of the briefs at least partly supported the proposal, there was concern that planning by a series of policy statements would lead to arbitrary, ad hoc decision making, a lack of co-ordination within the planning system, and piecemeal, fragmented "plans".

8.10 The government supports PARC's view that plan preparation requirements should be made much more flexible and tailored to the particular needs of a municipality, but disagrees with PARC that planning can be effectively done on an incremental policy statement basis. The government believes that certain planning elements, such as land use, transportation and population density are so interrelated, especially in major urban areas, that policy statements could not really be produced in isolation of each other. It would also be very difficult for citizens to know at any given time exactly what constituted the total "plan" for their municipality.

8.11 The government, however, agrees that considerably more flexibility should be built into the current system, so that a plan can be tailored to the size and complexity of the municipality or area for which it is being prepared.

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[1] See Chapters 10 and 11.

8.12 The Ministry of Housing, in fact, already has a policy of allowing more flexible and less complex official plans. This enables, for example, a small rural municipality to prepare a simple plan covering only a few basic matters in contrast to a large urban centre that would require a more complex document dealing with many issues in detail.

8.13 The government will continue this policy and will issue a policy circular explaining the various types of plans that may be prepared for different municipal circumstances.

8.14 The purposes of official plans and their relationship to each other will be defined in broad terms in the Act, and the circular will set this out in more detail.

8.15 In addition, where official plans make provision for them, secondary plans may come into effect without provincial approval. Secondary plans will define more detailed policies for parts of a municipality. They will guide development in areas of change, or where a municipality wants to stabilize a particular neighbourhood. Such plans will be required to conform generally to the official plan.

8.16 Municipalities will be encouraged to set out their general development policies within the framework of a provincially approved official plan, so as to eliminate the need for frequent amendments, many of which deal with only local issues. Much of the detail now contained in official plans should be dealt with at the secondary plan level.

Conclusion 29

Where an official plan makes provision, secondary plans may come into effect without provincial approval, but they will be required to generally conform to the official plan.

Administrative arrangements will continue to allow for the preparation of less complex official plans where this is feasible, and a policy circular will be issued to assist in defining the various types of plans which may be produced in different municipal circumstances. The circular will elaborate on the hierarchial relationships of regional, municipal and secondary plans and explain changes in the municipal adoption and ministerial approval policy.

Nature of the Official Plan

8.17 The government agrees with PARC that an official plan should deal primarily with policies to guide the future physical development of a community. To expand the planning process to put social, economic and other related policies on an equal footing with the physical issues would be tantamount to turning the official plan into a corporate plan for the municipality.

8.18 If this were done, the official plan would become top-heavy and cumbersome and even more difficult to understand than it is now. It would also need continuous revision, and development proposals could be seriously delayed by arguments over whether all objectives and programs were or were not being met.

8.19 While the government realizes that social, economic and environmental objectives are valid municipal concerns, it also agrees with PARC that the official plan is not the place to address them in a detailed way. Indeed, many areas of human services planning, for example, are not even within municipal jurisdiction.

8.20 PARC recommended instead that the legislation require municipalities "to have regard for" social, economic and environmental considerations in developing the physical policies for their official plans, and that they should "take account of" possible social, economic and environmental consequences when implementing these policies[2].

8.21 In formulating a plan for a neighbourhood, for example, a municipality would ensure not only that adequate land was made available for social requirements such as schools, libraries and other community facilities, but also that the effects and consequences of development on the environment are recognized and resolved.

8.22 The government agrees that this is the right balance to strike in clarifying the nature of planning at the local level. It permits all relevant factors to be considered, even though the main focus of the official plan will be on the land use consequences of community development.

Conclusion 30

The official plan will be regarded primarily as a document setting out policies to guide the physical development of a municipality. Municipalities will be required to consider relevant social, economic and environmental factors in developing an official plan. In initiating various actions to implement the plan, a municipality must take into account the possible social, economic and environmental consequences of those actions.

Scope and Content of Official Plans

8.23 PARC acknowledged the wide divergence of views concerning the scope and content of official plans. Some submissions to PARC urged that the scope and content of the official plan be detailed in the Act itself, while others felt that these matters should be left to municipal discretion. PARC recommended that instead of legislating the specific scope and content of plans, the Act should require the plan to establish the basis for the planning actions a municipality proposed to carry out, such as passing a zoning by-law or carrying out a community renewal project. The Act, PARC stated, should also stipulate that plans specify:

- the objectives being sought
- the means to be used for achieving those objectives
- the procedures for periodic review and public consultation.

8.24 The few responses to this proposal generally agreed with it. Those disagreeing were concerned that the lack of legislatively prescribed scope and content for official plans would result in residents not knowing what to expect of their plans and making it impossible to compare one municipality's plan with another.

8.25 The government agrees that it should not specify in legislation the range of official plan issues a municipality must consider. To do so would violate the principle of greater local autonomy and cause a rigidity in plan preparation that would stifle innovation and the accommodation of special local circumstances.

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2 All official plans should permit facilities for community needs, such as education and health, in appropriate land use categories.

Conclusion 31

The Act will stipulate that official plans must establish the basis for the specific planning actions a municipality proposes to carry out by indicating:

- **the policy objectives being sought**
- **how the objectives are to be attained (e.g., development requirements, programs or facilities)**
- **standards or specifications to be applied**
- **the basis for the preparation of secondary plans**
- **procedures for administering the development requirements or programs**
- **procedures for review of the policy or program**
- **the public information and public consultation program.**

Legal Status of Plans

8.26 A significant proposal made by PARC was that the provisions of section 19 of the current Act, which require by-laws and public works to be in conformity with an official plan, be deleted and replaced with a provision that would require municipalities "to have regard for" their formally adopted planning policies in all their planning actions.

8.27 PARC felt that the current requirements have several adverse effects. Among them a misleading public impression that a municipality must act in a positive way to carry out the official plan. It may also lead on the one hand to legally worded inflexible plans, or on the other to the exclusion of important policies or programs, and an expression of bland "motherhood" generalities.

8.28 More than 80 per cent of the submissions responding to this proposal felt that the current section 19 provisions should be kept. Many were concerned that the PARC proposal would result in confusion and unreliability within the planning system by making the plan a much less positive document.

8.29 Because of the wide impact of the proposal, an independent opinion on the legal implications of the proposed change was sought[3]. The province was advised that, while the term "have regard for" may be useful in directing attention towards certain policies during the development approval process, it has little *legal* meaning. Municipalities, it was felt, could be ruled to have met the letter of the law merely by opening a plan, briefly considering it, and then proceeding to pass a by-law in conflict with it anyway.

8.30 Although it might be argued that other PARC provisions would have a legal bearing on this issue, the strong adverse public reaction together with this legal opinion are enough to convince the province that PARC's proposal should be rejected.

8.31 Nevertheless, in recognizing PARC's concerns on the effect of section 19, the government weighed the merits of loosening it by requiring general rather than strict conformity to a plan for zoning by-laws, while requiring councils to simply consider the provisions of the plan in passing other types of by-laws and in carrying out public works. It was concluded, though, that a "consider" provision would cause just as many problems of interpretation as "have regard for".

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[3] Background Paper 2: *Some Legal Implications of the Planning Act Review Committee Report*, G. J. Smith, Q.C., Weir & Foulds, 1979.

8.32 It was decided that the current section 19 provisions should be retained but that general conformity only should be required for all municipal by-laws and public works. In addition, official plan wording should be made less rigid, particularly the interpretation sections. To help achieve this, the Minister will issue a guideline to encourage municipalities to be more flexible in their numerical standards and in interpreting boundaries between land use classifications. At the same time, the integrity of official plan policies should be maintained and legalistic or vague wording avoided.

Conclusion 32

While maintaining the principle of section 19, only "general conformity" of by-laws and public works to an official plan will be required.

A guideline will be issued to assist municipalities in wording official plans to provide greater flexibility in interpretation.

Review of Official Plans

8.33 PARC recommended that municipal councils be required to formally review their planning policies at least once in the lifetime of each council to establish whether:

- the proposals and policies have been carried out
- the original assumptions are still valid
- the policy objectives are still appropriate
- the actions taken have been mutually consistent
- the results have been as intended or not
- procedures have been working satisfactorily, particularly for public involvement and the handling of grievances.

The majority of responses did not really quarrel with the need for such a formal review, but to require this within the short time frame of every council term was considered impracticable. A four or five year review was favoured.

8.34 The government believes that, while each new council obviously should be able to review the adequacy of its planning policies at any time, the official plan need be formally reviewed only every five years. The Minister will issue a guideline advising municipalities on the desirability for continuous review of official plan policies and setting out the scope of the five-year review. In the unlikely event that a municipal council does not comply with this requirement the Act will allow the Minister, where official plan policies are especially outdated, to direct a municipality to review its official plan. Should this fail, the Minister could then withdraw any delegated power or refuse to approve further amendments to the plan.

Conclusion 33

The Act will include a general provision that municipalities must review their official plan policies within five years to ensure that they are still appropriate. The Act will also state that each new council should give consideration to the adequacy of its official plan. The Minister will be empowered to direct a council to review and, where necessary, amend its plan if the Minister believes the plan is outdated.

IV: Implementation of Plans

9 Subdivision of Land

9.1 PARC commented that while the current system of subdivision control through registered plans of subdivision and land severances for individual parcels is relatively effective, its complexity leads to problems that can result in long delays. The often conflicting demands of those involved in the process lead to misunderstanding or confusion, and increasing public and private expertise is needed to make the system work.

9.2 The Committee considered proposing an alternative system in which the granting of a development permit would represent a single commitment for the subdivision of land, its development and future use. While it could not fully evaluate the implications, the Committee recommended that the province carry out a detailed study of an alternative system.

9.3 PARC concluded that the current system of registered plans and land severances be improved rather than replaced. Specific recommendations were aimed at reducing the fragmentation of approval responsibility and the use of discretionary powers, and increasing the level of public accountability.

9.4 The province has looked carefully at the feasibility of fundamental changes to the present system. One alternative was to eliminate the present severance process operated through committees of adjustment and land division committees.

9.5 This proposed system would have first provided for overall land use controls, provincially imposed where local zoning by-laws were considered inadequate or did not exist. No conveyance and development of land could then have occurred unless the proposal conformed to the land use controls. Where development proposals conformed to the controls, a land use permit could be obtained. No separate approval for the conveyance itself would have been necessary, since land could have been bought and sold so long as the parcel created conformed to all of the standards in the zoning by-law.

9.6 It was finally concluded that while this proposal had some advantages it would require a more elaborate administrative machinery and be more expensive to operate. It also would have had the distinct disadvantage of permitting land to be sold without the purchaser being assured that it could, in fact, be developed since there would have been no prior planning investigation, as is now the case.

9.7 Similarly, the feasibility of introducing a land use permit system was studied. This would have amalgamated the current dual system of development control through subdivisions and zoning. For reasons discussed in the next chapter, the government rejects this proposal, preferring to retain and improve the current subdivision process. Public response also supported improvements to the current process rather than fundamental changes.

Plans of Subdivision

9.8 *Scope of Draft Approval Conditions* PARC was particularly concerned about draft approval being granted subject to the approval of other agencies. It recommended that the approving authority be required to specify the nature of the conditions to be met by the subdivider and not word the draft approval in such a way that the requirements are to be established later by the agency involved.

9.9 Response to PARC generally favoured this, but some briefs felt it was unrealistic to require all of the standards and criteria to be set at the time of draft approval. The province recognizes the difficulties an agency may face in setting its precise requirements before detailed plans are submitted. Still, there will be relatively straight-forward applications where this can be done. Because individual requirements can vary so much, the government does not expect the approving authority to specify precisely the criteria to be used in assessing a final plan, but specific draft approval conditions should be applied whenever feasible.

Conclusion 34

The present provisions in the Act for granting draft approval of subdivision plans will be retained. Whenever feasible, the wording of conditions on plans should be precise rather than general.

9.10 *Conditions for Final Approval* PARC observed that a broad discretionary power now allows municipalities to ask the Minister to impose conditions that could have a serious impact on the cost of subdivision development. The Committee felt that this raised serious questions of consistency and equity. The example cited was where municipalities require a subdivider to construct or provide money for works or facilities outside the area being subdivided — projects that do not directly benefit the subdivision. The Committee argued that this practice is wrong in principle and that the Act should only require the imposition of conditions that are "reasonably related" to the needs of the subdivision in question rather than "advisable" as is now the case.

9.11 Many developers strongly supported this recommendation, the only criticism being that the term "reasonably related" was too vague. PARC anticipated this criticism but felt that any resulting litigation would be outweighed by the improvements to the current process which is unpredictable and inconsistent. The province agrees.

Conclusion 35

The present provisions of the Act allowing the setting of conditions that are "advisable" will be replaced by a provision that conditions only be imposed that, in the opinion of the Minister or his delegate, are "reasonably related" to the need for facilities generated by the particular subdivision.

9.12 *Parkland Dedication* As a condition of subdivision approval, up to five per cent of the land being subdivided may now be required to be conveyed for park purposes. This may apply to residential, industrial or commercial subdivisions. The Act also allows a municipality to pass a by-law to allow for a higher dedication of up to one hectare per 300 dwelling units (one acre per 120 units), where park policies have been approved in the official plan.

9.13 PARC saw no reason why the alternative provision of open space related to the density of population should not be incorporated directly as a condition of subdivision approval without having to pass a by-law under section 35b of *The Planning Act*. Most submissions endorsed the proposal, although some stated that the decision on maximum amounts should be left to individual municipalities.

Conclusion 36

As an alternative to the normal five per cent park dedication, a municipality may require the conveyance of parkland directly in residential subdivisions at a rate of up to one hectare per 300 dwelling units (one acre per 120 units), on condition that official plan policies have been approved that set the basis for requiring the higher amount.

9.14 PARC also felt that, while municipalities should be allowed to require parkland dedication in industrial and commercial subdivisions, they should have to justify what they need and not arbitrarily use the present five per cent provision in the Act. PARC proposed that the Ministry establish the maximum amount that could be required in such cases. Although public briefs generally favoured this approach, some questioned whether any land should be dedicated at all. Municipalities can presently require the five per cent provision in commercial or industrial plans of subdivision and the province agrees that this is excessive.

Conclusion 37

A municipality may require the conveyance of a maximum of two per cent of the land in an industrial or commercial subdivision for parkland purposes, or cash-in-lieu to this maximum.

9.15 *Use of Parkland and Park Funds* PARC identified three main concerns with the current legislation regulating the use of parklands and park funds. First, the Minister's approval should not be needed to use park funds for park development purposes, such as building an ice rink. Second, the Minister's approval should not be needed to use parkland funds to acquire lands for other public purposes, and third, park lands conveyed to a municipality should be able to be sold within the first five years, without the Minister's approval.

9.16 PARC responded to these concerns by basing its proposals on the issues of benefit and equity to the residents of the subdivision from which the parklands or funds were obtained in the first place. It suggested that actions related to the use of parkland and park funds are essentially a municipal matter and, in keeping with its basic philosophy of strengthening local autonomy, proposed that the Minister's approval no longer be required for such actions. These proposals were strongly supported.

9.17 The government agrees with the principles established by PARC and enacted amendments to *The Planning Act* in December 1978 to put them into effect. These amendments eliminate the need for the Minister's approval for the sale of parkland or use of park funds for park purposes, but establish that park funds cannot be used for other than park or recreational purposes.

Conclusion 38

The wording of *The Planning Amendment Act, 1978* related to the provision of open space will be incorporated into the new legislation.

9.18 To remove any doubts about a municipality's authority to obtain cash-in-lieu of parkland, PARC also proposed that a municipality be enabled to "require", rather than "accept", cash payments instead of parkland dedication. Also, where a municipality has established cash-in-lieu policies in its official plan, it should be exempt from requiring the Minister's approval for such transactions.

9.19 The government agrees with the principle of a municipality being able to require cash payments rather than merely accept them, but does not feel it necessary to require an official plan statement establishing cash-in-lieu policies. This is because *The Planning Amendment Act, 1978* established that such funds can now only be used for park or recreational purposes rather than public purposes generally.

Conclusion 39

Municipalities will be enabled to "require" rather than "accept" cash payments instead of parkland dedications.

Land Severances

9.20 As explained earlier, although the Ministry tried to develop an alternative system to the present severance process it has concluded that the existing system should be retained.

9.21 PARC proposed specific improvements to the current severance system, and these were studied, together with other proposals from within and outside government. It became clear that amendments to the current section 29 of *The Planning Act* were urgently needed to simplify and expedite land transactions. In particular, lawyers had stressed that the conveyancing of land had become so complex, that in some cases they were reluctant to certify land title for clients.

9.22 Because of the urgency of the situation, amendments to the Act were made in December 1978 providing:

- that once a legal parcel has been created either by means of a registered plan of subdivision or consent, or is within a registered description under *The Condominium Act,* it would not be necessary in subsequent transactions to examine beyond that approval to determine if the same land in the past ever had been the subject of an illegal sale
- that in the future once a consent has been given to the conveyance of a parcel of land, the same parcel may subsequently be conveyed without a further consent being required, even though it abuts land in the same ownership.

These provisions were introduced to simplify procedures and to eliminate the need to obtain approvals that serve no useful purpose.

Conclusion 40

The current process of land severances will be retained, and the provisions to improve the current system enacted in *The Planning Amendment Act, 1978* will be incorporated into the new legislation.

9.23 Although most severance-granting committees have some form of policies against which severance applications are evaluated, some committees continue to grant consents in the absence of any such guidelines. This should no longer be tolerated.

Conclusion 41

In order to guide consent-granting authorities in their decision-making, the province will require the inclusion of severance policies in municipal official plans. Where these policies are inadequate or do not exist at all, they may be added to the plan directly by the Minister of Housing. Once such policies are in effect consent-granting bodies will be bound by them.

9.24 PARC rejected the suggestion from school boards and conservation authorities that they be exempt from the need to obtain land severance approval when buying or selling land. The request was repeated in response to the PARC report.

9.25 The province feels that there is no justification to extend the exemptions from land severance control at the present time. Apart from setting a precedent which may lead to others such as public utility boards seeking exemption, the government's intention to give municipalities more planning authority to protect their planning interests would be weakened if such bodies were exempt from the land severance requirements.

Conclusion 42

No extension to the exemptions from obtaining land severance approval will be made.

Part-Lot Control

9.26 PARC proposed that universal part-lot control should cease to apply but that municipalities and the Minister be authorized to institute part-lot control in new subdivision plans and in specific areas defined by municipal by-law.

9.27 PARC could see no reason why property transactions involving land already subdivided should be subject to further control if the nature or character of the building or neighbourhood involved is not materially altered. Public response was evenly split. Many large urban municipalities opposed it, contending it would be more costly than the existing system which gives the municipality an opportunity for review.

9.28 The province agrees with PARC that universal part-lot control across the entire province should no longer be required. Subjecting property transactions to such control can cause undue hardship to many property owners and add unnecessarily to the planning responsibilities of a municipality. In many cases, the benefits obtained do not justify the amount of municipal involvement required.

Conclusion 43

The new legislation will terminate universal part-lot control, but will allow municipalities to pass by-laws to apply this control to those subdivisions where it is felt to be necessary. Similar power will be given to the Minister.

10 Zoning

10.1 PARC recommended that the present system of development control through zoning should be retained and not replaced by a British-type development permit system.[1] It reasoned that a development permit system is inherently discretionary, with too much potential for misuse and for arbitrary decision making. PARC felt too that the disadvantages of such a system far outweigh its potential benefits and recommended instead that the current zoning system be retained, but improved.

10.2 The public response generally endorsed this position, but a few briefs urged the government to look further into a permit system.

10.3 In its examination of a possible alternative to subdivision control (Chapter 9), the government concluded that a land use permit system should not be introduced. It was felt that many of the good points of the British system could already be achieved under the combined subdivision, zoning and site plan control system. The government therefore agrees with PARC that the current system of land use control through zoning should be retained, but improved.

10.4 Consultants were retained to more fully assess the implications of PARC's recommendations, and to report further on some of the special zoning techniques proposed by PARC[2]. The government also looked into some of the specific proposals, such as recommendations on transfer of development rights and amortization of non-conforming uses.

Framework for Improvements

10.5 Because, as PARC pointed out, zoning by-laws are commonly used for two different purposes: protecting the character of established communities and regulating new development, the use of zoning has created difficulties. It is not flexible enough to regulate new development, and it frequently misleads the public by creating a false sense of assurance about the future use of land.

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1 Instead of controlling development through such tools as plans of subdivision and zoning by-laws, the British system disallows any development or any change in land use until a landowner obtains a municipal permit.

2 Background Paper 3, *Analysis of the Recommendations on Development Control,* Proctor and Redfern Limited, Consulting Engineers and Planners, 1979.

10.6 PARC recommended that these problems could best be overcome by providing different kinds of control for different circumstances. This would give municipalities more flexibility and at the same time provide greater certainty and predictability to the public.

10.7 PARC also made a number of proposals aimed at overcoming specific zoning problems, particularly in the area of interim control and site plan review. The public generally endorsed all of PARC's proposals, although some of the more minor recommendations on site plan review drew some criticism.

10.8 The government agrees that the system can best be improved by rationalizing the many purposes for which zoning is now used. The Act should recognize three distinct levels of controls: long term controls, short term controls and site plan control, and also various zoning techniques such as holding by-laws and bonus zoning now used by municipalities.

10.9 A number of other modifications to PARC's proposals will be made to simplify the application of the various zoning techniques and, in the case of holding by-laws, to considerably alter their nature and extend their scope.

10.10 Lastly, the government agrees with PARC that the term "restricted area by-law" should be discontinued in favour of the term "zoning by-law" which has been popularly used for many years.

Conclusion 44

The present system of development control through zoning will continue to be used to control and regulate land uses, but will be modified by grouping the various purposes for which zoning by-laws are used under long term controls, short term controls and site plan controls. The term "restricted area by-law" will be replaced by the term "zoning by-law".

Long Term Zoning Controls

10.11 Historically, zoning was devised to maintain the established character of neighbourhoods and to prevent the intrusion of undesirable uses. Over the years, however, it has been used in various forms: to establish future land uses, as a development control tool, to phase development, and to temporarily freeze development.

10.12 When used in these ways, the purpose of a particular zoning by-law becomes confused, and its initial intent of providing stability and predictability is lost.

10.13 Apart from the site plan control provisions in section 35a, the Act makes no provision for separate types of zoning. Municipalities simply use the overall provisions of section 35.

10.14 The government is now defining the different types of zoning. As a result, it will be possible for someone to easily determine the purpose of a by-law and whether a municipality is trying to achieve long or short term land use controls in a given area.

10.15 The present section 35 zoning provisions can then be used specifically for their original intent of providing stability to existing neighbourhoods. When used in conjunction with holding by-laws, more effective zoning control will also be possible through the pre-zoning of undeveloped lands to their anticipated future use when these uses have been established in an official plan, secondary plan or subdivision plan.

Conclusion 45

The main purpose of long term zoning control is to provide certainty and predictability. Long term zoning by-laws will be used primarily to zone existing uses that are stable and enduring, and to prezone lands to future uses where such uses have been relatively firmly fixed.

10.16 *Holding Zones* PARC recommended that municipalities should have the power to enact holding by-laws for rural land that eventually will be converted to urban use and for properties (such as environmentally sensitive sites) where the impact of development cannot properly be assessed in advance of specific development proposals. A clear majority of public briefs supported this proposal.

10.17 The government feels that the use of holding techniques can be given wider scope than indicated by PARC. Municipalities will be allowed to zone in a holding category rural land that has been identified in an official plan for future urban uses and, in conjunction with long term zoning by-laws, to use holding designations to control the phasing of development. Such phasing control might be used to ensure the orderly growth of a neighbourhood or to postpone development until conditions required by a municipality, such as the provision of services, have been met.

10.18 For these latter circumstances, an "H" (for holding) prefix would be appended to the zoning category at the time that the land is zoned for its intended future use. This designation would indicate that the land could not automatically be developed for its zoned use until the "H" is removed.

10.19 The removal of the holding designation would be initiated by council amending the zoning by-law, but no Municipal Board approval would be required. Refusal by a council to remove the holding designation, however, would be subject to appeal.

10.20 In order to use holding by-laws, municipalities will first be required to adopt official plan policies setting out the objectives to be achieved through the use of holding by-laws, the basis for selecting the particular areas to which they will apply, the conditions under which they will be removed and the procedures for the release of the holding designation.

Conclusion 46

Municipalities will be permitted to employ holding provisions in a long term zoning by-law for the purpose of controlling the phasing of development. In operating this power, municipalities will be required to adopt policies in their official plan setting out the objectives for the use of holding controls and the basis for their administration.

10.21 *Bonus Zoning* It is often difficult for municipalities to encourage innovative forms of development or to achieve some specific objectives established in an official plan. For example, a plan might include a policy for the preservation of an historic building in an area to be redeveloped or the provision of an amenity such as extra open space. It is not really possible to achieve these objectives in a general zoning by-law.

10.22 To overcome this, some municipalities grant a developer an increase in density in exchange for obtaining the particular objective that the municipality wants. PARC recommended that the Act authorize the use of such bonus zoning, but within a structured framework. Public response generally supported the proposal and the government agrees that this power should be authorized in legislation.

10.23 To enact bonusing provisions in a by-law a municipality will have to set out in its official plan the particular objectives being sought, the criteria to be employed, and the areas to which the provisions will apply. The bonusing provisions themselves would be incorporated in the zoning by-law. Both the official plan policy and the by-law provisions would be subject to normal requirements for notification, hearing and appeal.

10.24 The by-law should specify the incentives to be provided, either in terms of additional density or use, and contain a schedule specifying the particular bonus available in return for providing a defined amenity.

10.25 The amenities to be sought need not be restricted to detailed site requirements, but could also relate to broader planning objectives identified in the official plan, such as the provision of a certain percentage of low-cost housing.

10.26 Once the provisions are in force the awarding of bonuses would be automatic and would be granted and enforced through a zoning agreement.

Conclusion 47

To provide more flexibility in long term zoning controls, the Act will enable municipalities to enact bonus zoning provisions in order to grant incentives through the awarding of bonuses to density or use in return for meeting a policy objective in an official plan.

Short Term Zoning Controls

10.27 PARC recommended that two types of short term controls — interim control by-laws and temporary use by-laws — be recognized in legislation. There was strong public support for this. Both controls provide a means of temporarily zoning land in areas of change, rather than establishing or protecting a more definite land use. These controls are already being used by municipalities, but only the temporary use of vacant land for parking is specifically authorized by legislation.

10.28 Although it has been suggested that the measures be combined into a single power to simplify zoning procedures[3], this has been rejected in favour of retaining each type of control for its own distinct purpose. The common temporary nature of the controls will be recognized by including them under the heading of short term controls in the Act to distinguish them from long term zoning controls and site plan control.

10.29 *Interim Control By-laws* PARC recommended that "a municipal council should be able to control development on an interim basis when it decides to review or change the existing land use and development policies in a given area . . . Interim control is needed in these situations so that the municipality's future options are not preempted while the new policy is being established"[4]. As already noted, the public almost unanimously supported this proposal, and the province agrees that such interim control is necessary.

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[3] Proctor and Redfern Report, p. 20.

[4] *PARC Report*, pp. 95-96.

10.30 The province also agrees with PARC that interim control should be limited both in terms of how it can be used and in the length of time it can remain in force. The Act will provide that interim control by-laws may be used when a municipal council decides to review or change the existing land use and development policies in a given area or when a municipality wishes to develop policies for areas where no policies presently exist.

10.31 The by-law should define the area covered and indicate the uses to be permitted as of right.

10.32 Interim control by-laws will be limited to a maximum duration of two years, but if a council finds that extra time is needed to complete the preparation of a new policy or by-law, it will be allowed to extend its effect for a further year. To prevent unreasonable use of such by-laws, their further use in a given area will be prohibited for a three year period following expiry of the original by-law.

Conclusion 48

Municipalities will be able to enact by-laws to control development on an interim basis in given areas while new or revised zoning and development policies are prepared for such areas. Interim control by-laws will have a two year duration, extendable for one additional year, and will be subject to the procedures of notification, hearing and appeal as specified in the Act.

10.33 *Temporary Use By-laws* PARC also recommended that existing provisions allowing municipalities to establish temporary zoning for parking purposes only should be extended to cover all uses. The government agrees with this proposal.

10.34 The Act will authorize municipalities to pass temporary use by-laws, but such by-laws will have to specify the temporary use that is authorized, the location and period of authorization, and the uses permitted upon expiry of the temporary use. Temporary uses will be permitted up to a maximum of three years, but successive renewals of three years or less will be permitted until the temporary use is replaced by a permanent use. By-laws would be subject to the provisions of notification, hearing and appeal when initially imposed and also when renewals occur. The Act will also state that legal non-conforming use status cannot be secured for uses established under the temporary use by-law.

Conclusion 49

Municipalities will be given the power to zone land for temporary uses and such uses will not qualify for non-conforming use status.

Site Plan Control

10.35 PARC recommended that the scope of development review (site plan control) be broadened and made less particular by replacing the twelve specific items listed in section 35a with four categories of general concerns: urban design, environmental impact, access and circulation (vehicular and pedestrian), and the operation and maintenance of facilities for public and semi-public use. PARC did not, however, recommend that the powers be extended to include such matters as height, density and use as some briefs suggested.

10.36 The Committee said that the exercise of site plan control powers should require the adoption of a policy statement setting out the objectives and principles to be employed, and the adoption of a by-law setting out the criteria to be used for the review of proposals. Other technical and procedural changes were also proposed.

10.37 Public response was mixed. Views were split, both on the broader proposals for reform and the more minor technical proposals, making it difficult to judge their acceptability. Architects in particular were extremely concerned about giving municipalities authority over design.

10.38 To gain more detailed reaction, the Ministry provided assistance for a study of the implementation of site plan control.[5] This report indicated that site plan control is now an integral part of the planning process of many municipalities, and most of them are generally satisfied with the powers and the way they operate.

10.39 Recently, the operation of site plan control powers have been affected by a legal challenge to the City of Toronto's by-law applying section 35a controls to the central core of the City. On January 23, 1979 the Supreme Court of Canada declared this by-law to be *ultra vires* because it substantially repeated the wording of section 35a of *The Planning Act*. The court ruled that in its view this was not the original intent of the Legislature in enacting section 35a. It ruled that instead of merely listing the various facilities and matters to be regulated, provided or prohibited, the by-law should have specified exact standards relating to all the matters described in section 35a.

10.40 The Supreme Court decision brought into question the legality of many section 35a by-laws enacted by other municipalities in a manner similar to the City of Toronto by-law. At the time of writing this White Paper, the government was preparing to introduce an amendment to *The Planning Act* to clarify the way in which site plan control matters can be handled by municipalities.

10.41 One other improvement not dealt with in the amendments is also proposed. PARC recommended that, for complex buildings or large-scale developments, an applicant should be able to receive "approval in principle." This has merit since it allows the broad principles of a proposed development to be agreed upon before the applicant goes to the expense of preparing detailed drawings.

10.42 The Ministry, in its guidelines on site plan control, will encourage municipalities to enter into agreements with applicants to settle the principles of a proposed development before the formal submission of a detailed site plan application. An agreement could settle such matters as the general siting of buildings, access, landscaping, and so forth, and could also indicate any other conditions the municipality requires under its site plan control powers before final site plan approval would be given.

Conclusion 50

Municipalities will be encouraged to enter into agreements with applicants to settle the principles of proposed large scale developments before the formal submission of a detailed site plan application.

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[5] Papers on Planning & Design, Paper No. 20 *Site Plan Control in Ontario*, Malcolm B. Reed, University of Toronto, November 1978.

Effect of Proposed Changes

10.43 The government feels that the improvements outlined will help to produce a more effective zoning and development control process. By separating such instruments as interim control by-laws, holding by-laws and temporary zoning, it should be possible for municipalities to use traditional zoning by-laws for their original purpose of providing stability to existing neighbourhoods and designating land for future development.

10.44 Also, a clearer distinction between long term, short term and site plan controls will make it easier for municipalities to select the controls it needs for specific purposes. Over time, a much more rational use of zoning should develop, and this should lead to controls being more understandable by the public.

10.45 The government, of course, does not assume that every municipality will use all of the controls described here. They should be seen rather as tools that are available for use whenever a municipality faces a particular problem. Smaller rural municipalities may require no more, say, than a long term zoning by-law. Others may want to use site plan control in conjunction with long term zoning, while large urban municipalities may want to make full use of all the powers.

10.46 When the new Act comes into force, the government will issue a series of guidelines to describe in more detail how the revised zoning system will work and to elaborate on the nature and intent of the special zoning controls outlined here.

Obsolete Zoning By-laws

10.47 PARC stated that its zoning proposals, particularly the introduction of interim controls, would reduce municipal dependence on purposely retaining obsolete by-laws as a way of controlling development on a site-by-site basis. The government agrees and feels that its own proposals, which are similar to PARC's, should help eliminate some of the common abuses of zoning powers.

10.48 PARC went on to recommend that the Act require municipalities to examine the basis and appropriateness of their by-laws at least once every five years. To make this self-enforcing, the Act should also enable any resident to seek a judicial order to compel a municipality to conduct such a review. Most public submissions that commented agreed with the five-year review.

10.49 The government, however, does not agree that such a review be mandatory. First of all, it seems unfair to put the onus entirely on private citizens to ensure that municipalities keep their zoning by-laws up-to-date by going to the expense of applying for a court order. Second, section 35(22) already allowing anyone to appeal to the Ontario Municipal Board when a municipal council refuses to amend its by-laws when requested, will be retained. This power should be enough to ensure that an individual still can seek a zoning by-law change. Lastly, the Minister will be given the reserve power to direct municipalities to review their zoning by-laws where he feels that municipalities deliberately have allowed their by-laws to become obsolete.

Conclusion 51

To overcome the problem of purposely outdated zoning by-laws, the Minister will be given the reserve power to direct a municipality by order to review its zoning by-law and to make such necessary changes as are specified in the order.

Non-conforming Uses

10.50 PARC partly addressed the issue of non-conforming uses in Part III of the report, dealing with proposed improvements to the Act, specifically in Items 64 to 67 and Item 88.

10.51 Two specific issues should be addressed here, namely, the amortization of non-conforming uses and maintaining an inventory of non-conforming uses.

10.52 *Amortization of Non-conforming Uses* Amortization of non-conforming uses is a method, developed primarily in the United States, to promote the elimination of uses or buildings which do not conform to the zoning by-law. It allows the owner of such a building or use to write-off his investment over a period of time, following which the use must cease or the building be removed. PARC raised the issue but made no recommendation other than that the concept be studied further.

10.53 Accordingly, the government commissioned an examination of the use of amortization in the United States[6] and also provided funding for a university graduate study into the law relating to amortization of non-conforming uses[7].

10.54 It was found that the technique has been used mostly in New York City, Baltimore, San Francisco and Los Angeles, but otherwise has not been widely used. Amortization has been used most successfully where little or no investment is attached to the uses involved. It has been significantly *less* successful where large capital investments are involved requiring lengthy amortization periods to recoup the high investment. The amortization technique, then, only seems workable for the elimination of such uses as junkyards and other low-investment open uses, over relatively short periods of time and where no great financial hardship to the owner or operator of the use would result. The government accepts this limited use of the amortization concept.

10.55 The Act will therefore authorize the use of amortization powers as a means of eliminating non-conforming uses of land, and of buildings incidental to the use of the land. A maximum amortization period of five years, together with procedures relating to the use of the power, will be established in the Act.

10.56 The use of the amortization power by municipalities will be monitored by the government with a view to possibly extending the powers in future to apply to other classes of non-conforming uses or buildings when more experience with the technique has been gained.

Conclusion 52

Amortization of non-conforming uses of land, and buildings incidental to the use, will be authorized under the Act up to a maximum period of five years, renewable for further five year periods.

Amortization by-laws will be required to specify the uses to be amortized, the location of the uses, and the period of amortization. The by-law and any subsequent extensions would be registered on title and will be subject to provisions of notification, hearing and appeal.

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6 Background Paper 4, Llewelyn-Davies, Weeks Canada Ltd., *Amortization of non-conforming uses: An examination of U.S. Experience in the compulsory termination of troublesome uses*, 1979.

7 S. M. Brooks, "Amortization of non-conforming uses: An Evaluation", University of Western Ontario, January 1978. (Unpublished)

10.57 *Inventory of Non-conforming Uses* PARC recommended that prior to enacting a zoning by-law, a municipality should establish an inventory of the properties to be made non-conforming by that by-law and also, if it has not already done so, of properties that may be non-conforming by virtue of an existing zoning by-law. Such inventories will be important if the amortization power is used.

10.58 Obviously, maintaining an up-to-date inventory of non-conforming uses is a good idea. Many municipalities routinely enact zoning by-laws that have the effect of creating non-conforming uses and buildings, often being unaware of the consequences of their actions on the legal rights of the owners of such buildings. Some municipalities do not even try to sort out those uses that should be made non-conforming because of their clear incompatibility and those that while strictly speaking are non-conforming do not really cause a serious nuisance. Indeed, some of the latter, such as corner stores may even enhance the amenity of an area.

10.59 Municipalities should, as a general rule, be encouraged to give conforming status to the non-nuisance uses and to retain as non-conforming only those uses that it eventually hopes to eliminate.

10.60 The government does not propose to require that municipalities compile an inventory of non-conforming uses and buildings, but the changes to the zoning system described in this chapter should encourage municipalities to be more aware of the status of non-conforming uses. Similarly, changing planning practice, particularly towards mixed use development, will undoubtedly motivate municipalities to recognize many existing non-conforming uses as being acceptable.

Conclusion 53

Guidelines will be issued elaborating on the legislative provisions relating to the establishment, status, continuance and termination of non-conforming uses, and encouraging municipalities to maintain an inventory of non-conforming uses and buildings. Municipalities will also be encouraged to give legal recognition to existing non-conforming uses that are compatible with adjoining uses.

Transfer and Acquisition of Development Rights

10.61 One of PARC's zoning proposals would enable the transfer of development rights between building sites in order to achieve any of the following objectives:

- preservation of privately owned open space free of buildings
- retention and maintenance of historically or architecturally significant buildings
- retention of axial views or other significant design features
- retention of equity between owners of large and small development sites in locations designated for mixed use development.

PARC also recommended that municipalities be able to purchase development rights of particular classes of property according to procedures set out in regulations. Classes to be identified in the first instance would be properties of unique architectural, historic or natural environmental significance. The public generally favoured both these proposals.

10.62 The Ministry has been aware, for some time, of the potential of the transfer of development rights technique. Again this is a practice that appears to have evolved in the United States with little record of it ever having been used in Canada. To learn more about its possible application in Ontario, consultants were asked to examine the use of transfer of development rights in other jurisdictions as part of an analysis of PARC's recommendations on development control[8]. A study also was conducted within the Ministry to examine the use of TDR systems in other jurisdictions[9], and funding was provided for an examination of the legal implications of the concept[10].

10.63 These studies agreed that TDR is a potentially useful device. In theory it can offer, for example, a form of compensation for restricting a landowner's right to change the use of land or alter or demolish buildings. It can also provide a way of preserving historic buildings or private open space, or promoting developer equity within a planning area of multiple ownership. It is evident, however, that the actual use of TDR has been very limited, and even when used the results have often been less than successful. Literature on the subject is extensive and different approaches on the use of the power have been proposed, but as yet very few TDR working models exist. It is also evident that to put it into practice a complicated and cumbersome administrative machinery would have to be established.

10.64 All three studies recommended that, if adopted, the power should be limited to begin with. All cautioned that any permissive legislation be carefully structured to prevent abuses. Serious questions were also raised as to the legal implications of the use of TDR, particularly over the issue of compensation for damages resulting from municipal planning actions, an issue on which attitudes differ considerably in Ontario and the United States.

10.65 The government has concluded that, while the concept of TDR has merit in theory, it is too complex a system with too many unknown factors to be authorized in legislation at this time. This does not prevent municipalities from experimenting with the technique. There are examples in Ontario where the concept has been tried in limited ways. If future experience with the technique suggests a need to formally define TDR powers in legislation, the government will seriously consider amending the Act.

10.66 PARC's recommendation that municipalities be permitted to *acquire* development rights for specified purposes has also been dismissed because, in the government's opinion, municipalities already have the power under *The Municipal Act* to acquire any part of a fee simple in land.

Conclusion 54

Legislative provision for the transfer of development rights is rejected at this time.

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8 Proctor & Redfern Report, *Ibid*, p. 82.

9 Local Planning Policy Branch, "The Transfer of Development Rights", (Unpublished), April 1978.

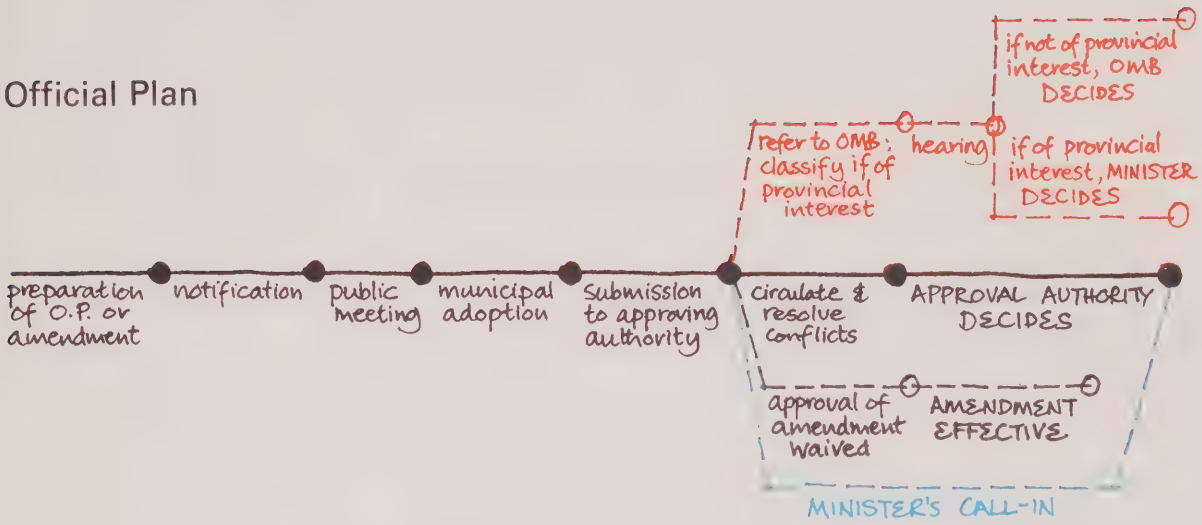
10 S. M. Brooks, "Transferable Development Rights: A New Planning Tool for Ontario Municipalities". University of Western Ontario, (Unpublished), 1978.

Networks of Future Process

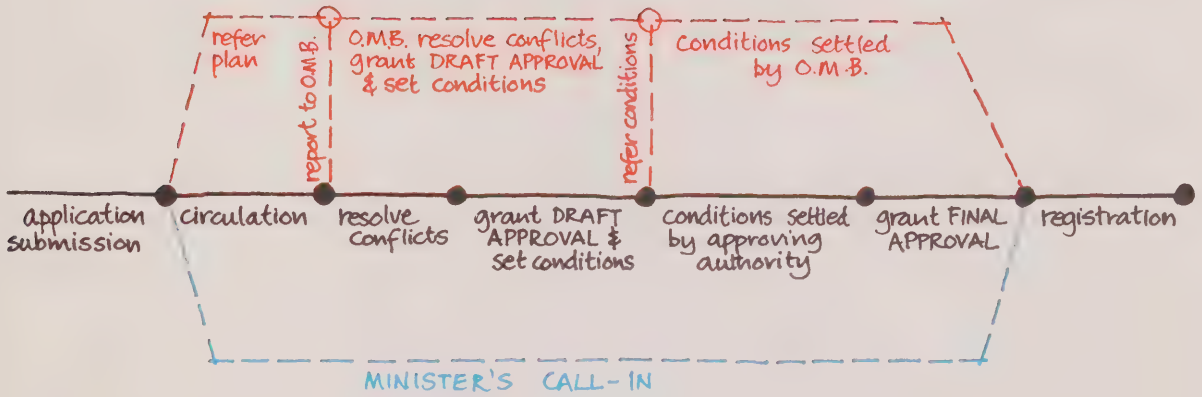
—Minister of Housing

—Ontario Municipal Board

Official Plan



Subdivision



Zoning By-law

11 Other Controls

11.1 In addition to subdivision control and zoning, there are three areas of control in *The Planning Act* where some significant changes are proposed. These are redevelopment (sections 22-24), building by-laws (sections 38 and 39), and enforcement provisions (section 43).[1] PARC dealt with these in Part III of its report.

Redevelopment

11.2 Sections 22 to 24 of the current Planning Act contain the provisions relating to redevelopment. They enable municipalities to prepare redevelopment plans for defined areas and to carry out comprehensive redevelopment or community improvement programs within such areas. A number of submissions to PARC recommended various amendments to these sections.[2] The submissions were generally aimed at obtaining three basic changes:

- to replace "redevelopment" with the term "community improvement" to reflect current use of the powers and to remove any inference that demolition is necessarily contemplated
- to require the Minister's approval only for the designation of a redevelopment area and the approval of a redevelopment plan. All other requirements for Minister's approval should be deleted
- subjecting the redevelopment plan to the same public involvement, notification, hearing and appeal provisions as official plans.

11.3 PARC agreed with these proposals, and public response was generally favourable. The government has been aware of most of these concerns for some time, but wanted them publicly discussed through the review process. In light of the favourable response, the changes will be made.

Conclusion 55

The redevelopment provisions now contained in sections 22 to 24 of *The Planning Act* will be amended as follows:

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1 Minor changes to some other special controls currently contained in the Act, such as property standards provisions, are not dealt with in this Chapter but can be found in the draft legislation.

2 *PARC Report,* Part III, Items 19-29.

- **the word "redevelopment" will be replaced by "community improvement"**
- **the redevelopment (community improvement) plan required by these provisions will be subject to the same procedures for notification, hearing and appeal as is proposed for official plans**
- **the approval of the Minister of Housing will be required only for the by-law designating a community improvement area, for the community improvement plan provisions (and their amendment), and to authorize municipalities to acquire land before a community improvement plan is approved by the Minister. All other requirements for the Minister's approval will be deleted from these provisions**
- **the authority for a municipality, with the approval of the Minister, to enter into agreements with other governments, will be broadened to include a wider range of matters than is now provided for.**

Building By-Laws

11.4 It has been agreed with the Ministry of Consumer and Commercial Relations that the provisions contained in sections 38 and 39 of *The Planning Act* dealing with building by-laws be repealed. Most of the provisions will be contained in the Ontario Building Code or the proposed fire and maintenance code which applies to existing buildings.

Enforcement Provisions

11.5 There are currently two basic provisions relating to the enforcement of planning by-laws: the right to restrain powers contained in section 43 of *The Planning Act* and the power to impose fines for contravention of by-laws contained in section 466 of *The Municipal Act*. In addition, sections 34, 35c, 36 and 37a of *The Planning Act* provide for special penalities.

11.6 There are two issues associated with the enforcement provisions:

- the adequacy of penalties that can be imposed for contravention of by-laws
- whether the Act should authorize employees of a municipality to enter onto private property without permission of the owner to determine if the provisions of a zoning by-law are being violated.

11.7 Both these issues have been discussed with the Ministry of the Attorney General so that any changes to the powers would be in line with enforcement provisions in other legislation. On the first issue, the penalties that can currently be applied are generally insufficient. A maximum fine of $1,000 can be imposed under section 466 of *The Municipal Act*, but this is scarcely a deterrent against violations where multi-million dollar proposals are concerned. Greater flexibility in awarding fines is also needed so that they can suit the seriousness of the offence. To overcome these deficiencies, provision will be made in *The Planning Act* to change the penalties for planning offences.

11.8 On the second issue of right of entry to enforce zoning by-laws, PARC recommended in Item 61 of Part III of its report that such power *not* be included in legislation because it would constitute an unwarranted infringement of private property rights. Many municipalities disagreed and urged that they be given right-of-entry powers for enforcement of zoning by-laws as well as for maintenance and occupancy by-laws.

11.9 In making its recommendation, PARC appears to have over-looked the availability of similar powers of entry in section 36(5) of *The Planning Act* and in other legislation, and the possibility of safeguarding private property rights by requiring a municipal official to obtain a search warrant from a judge before entering a property. The government considers that municipal right-of-entry power should be available for enforcement of zoning by-laws because violations often take place inside a building with no visible external evidence. Proof of such a violation simply cannot be established without gaining entry.

Conclusion 56

The penalties that can be imposed for contravention of by-laws passed under *The Planning Act* will be based on the following principles:

- **as well as providing for maximum fines, certain violations may be subject to payment of fines on a daily-weekly basis for the duration of the violation**
- **there will be a schedule of stiffer fines permitted for second and third offences**
- **higher fines may be awarded against corporations than individuals**
- **recovery of fines in default may be provided by placing them on the tax roll of an individual, and municipalities will be allowed to carry out any demolition or corrective works and charge for any costs through the tax rolls**
- **for offences where no penalty is specified in *The Planning Act*, the current provisions of section 40 will continue to apply.**

Provision will be made for municipalities to have a right-of-entry power to enforce zoning by-laws on condition that a search warrant is first obtained from a judge.

Control of Signs

11.10 It has been agreed with the Ministry of Intergovernmental Affairs that the provisions for control of signs now contained in section 354(1), subsections 126, 126a, 126b and 126c of *The Municipal Act* should be transferred to *The Planning Act*.

11.11 Control of signs can be considered an integral part of the development process, especially in urban areas, and controlling their size and location is analagous to the control of buildings and structures provided in zoning by-laws.

Conclusion 57

The powers relating to the control of signs contained in section 354 of *The Municipal Act* will be transferred to *The Planning Act*.


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V: Planning Procedures

12 Public Involvement

12.1 Provisions for public involvement form a key part of the revised planning system described throughout the White Paper, particularly in relation to the Ontario Municipal Board. Although rejecting PARC's proposals for a basic change in the role of the Board, the province intends to improve the way it operates in practice, and these improvements are outlined in Chapter 13. The OMB proposals, however, are based in part on some basic new requirements for notification, objection, hearing and appeal.

12.2 PARC based its recommendations on public involvement on two general principles. First, people should be given an opportunity to participate in the preparation of municipal plans and the making of planning decisions. Second, people who may be affected by a planning decision should be able to present their views and have their rights protected.

12.3 To accomplish this, PARC recommended that legislation *not* specify detailed public involvement requirements for municipal plan preparation, but rather that it be left to each municipality to determine its own policy on how the public should be involved, and that this be detailed in the municipal plan.

12.4 PARC also proposed that the Act require a municipality to notify all persons potentially affected by a planning decision. This would give residents the opportunity to attend a municipal meeting to present their views and, if necessary, appeal a municipal decision to the OMB. The Minister would prescribe by regulation the exact procedures to be used for public notification. PARC made specific recommendations on the rights of community associations, public access to records and process requirements for notification, hearing and appeal.

Public Involvement in Official Plans

12.5 Public response supported PARC's proposal that detailed procedures for general public involvement in preparing official plans should not be defined in the Act, but should be determined by each municipality as part of its plan preparation exercise.

12.6 The province supports these principles. It recognizes that with the extreme range of municipalities in Ontario, it would be unrealistic to try to spell out rigid and uniform public involvement procedures. These will vary according to municipal needs and should be a matter for local determination.

12.7 Still, it is a provincial responsibility to ensure that citizens have ample opportunity to be involved in the plan preparation exercise and that municipally determined procedures will, in fact, enable this to occur.

Conclusion 58

The Act will indicate general public involvement requirements in the formulation of official plans but will not state specific procedures to be used by municipalities. When preparing an official plan, the Act will require a municipality to ensure:

- **that the public is aware a plan is being prepared and what matters are proposed to be included in the plan**
- **that the public is aware of the opportunity to make representations on any matter in the plan.**

When submitted to the Minister, the official plan will have to be accompanied by a written statement indicating the public involvement procedures carried out by the municipality during the preparation of the plan.

Process Requirements for Statutory Planning Actions

12.8 In recommending basic requirements for notification, hearing and objection on all municipal planning actions, PARC felt that the disparity in legislative and OMB notification requirements for different types of planning proposals leads to public confusion. For example, the present procedures for zoning by-laws require that notification be given *after* the municipal decision is made, whereas for a minor variance a committee of adjustment gives notification to surrounding property owners *before* it makes a decision. PARC proposed that affected persons be notified and have an opportunity to make representation to council before a decision is made.

12.9 The province agrees with the principle of notification in advance, but such a provision should be provided for in regulations rather than in the Act. The use of regulations should lead to a better understanding and more effective administration which would speed up this part of the planning system. In this case, there *is* reason to ensure consistency and uniformity through specific requirements.

Conclusion 59

The Act will provide for regulations to be issued prescribing specific municipal procedures for notification, hearing and appeal of defined planning actions. A main objective will be to require notification and a public meeting before a final council decision is made.

Scope and Content of Regulations

12.10 *Notification* Response varied on PARC's recommendation that all potentially affected people be notified of *all* planning actions. Some held that the term "potentially affected" was too vague. Others felt the public need not be involved in all municipal planning actions.

12.11 The province agrees that the term "potentially affected" does not really give enough guidance to municipalities in determining to whom notification should be given for a specific planning action. The regulations will set out precise notification requirements for various types of planning actions. Those of

general application, such as overall official plans and zoning by-laws, will be publicized by area-wide advertisement in newspapers. For specific actions, such as zoning amendments, people within a pre-determined distance of the proposal site will be notified directly. A municipality may also require an applicant to post a notice on a proposal site for a specified period of time.

12.12 The province rejects PARC's recommendation that notification should precede *all* planning actions. Notification need not occur for subdivision plans or land severance applications.

12.13 Subdivision plans and land severances are basically instruments used to implement land use policies established in official plans and zoning by-laws, and these provide ample opportunity for people to be notified about what the nature of development in a particular area will be. Also, in some cases, the approval of subdivision plans or consents will be conditional on a zoning by-law amendment to ensure that conformity requirements are satisfied. As this process will also be subject to public notification procedures, it is felt that to force a subdivision plan or land severance through a further round of public notification and possible hearing and appeal will unnecessarily prolong the process.

12.14 Public notification in such cases will not be made mandatory, but there will be nothing to stop an approving authority from consulting "affected persons" if it thinks this necessary with a particular application.

12.15 To ensure affected residents are aware of all aspects of a proposed action, the regulations will provide for the public inspection of the details and any information related to it. The only exception should be information on statements recording the advice and opinions of staff, which may be made available at the discretion of the approving authority.

Conclusion 60

The Act will provide for regulations to be issued prescribing notification procedures for official plans, zoning and other by-laws passed under *The Planning Act*, as well as various applications and redevelopment plans. Subdivision plans, severance applications and site plan control applications shall be exempt from notification requirements.

The regulations will be based on the following principles:

- **before making a final decision on a specific planning action, a municipality will be required to notify all affected persons**
- **for planning actions of general application, notification may be by advertisement in newspapers having general circulation in the area**
- **for site-specific actions, all persons within a specified distance of the proposal site will be directly notified**
- **a municipality may require an applicant to post a notice on a site indicating the proposed action**
- **all types of notice should describe the action or proposal in everyday language and state when council (or committee) will hold a meeting to deal with the matter**
- **notices should indicate where further detailed information relating to the proposed action can be examined**
- **the notice should state that any person wanting to make representations should be prepared to do so at the municipal meeting.**

12.16 *Circulation* In addition to notifying affected municipal residents, provincial, municipal and other public bodies which may have an interest in the issue must also be notified. Regulations will set down procedures to ensure that each proposal is properly circulated and comments are quickly obtained.

Conclusion 61

Regulations will prescribe the procedures and conditions for circulation of specific planning applications to interested agencies and will establish:

- **the agencies to which a specific type of application *must* be circulated and those which *may* receive it, at the discretion of the approving authority**
- **that agencies must respond within 30 days with provision for one extension for a specific period of time if agreed to by the approving authority and the agency requesting an extension**
- **that after the expiry of the period or periods for response, the approving authority may proceed to make a decision on the matter.**

Municipal Meetings

12.17 PARC recommended that municipal councils should hold a formal hearing before making any planning decision. This recommendation, together with the proposal to turn the OMB into a hearing body recommending back to the Minister or council for final decision, and to restrict the grounds of appeal, generated more response than almost any other issue.

12.18 First, it was pointed out that the proposals to restrict the grounds for appeal and to turn the OMB into a hearing body would mean that the "full and fair" hearing guaranteed by *The Statutory Powers Procedures Act* would have to be held by a municipal council instead of by the OMB. This would cause obvious problems for councils involving proceedings which would be both costly and time consuming.

12.19 Second, PARC's proposal that the OMB examine the record of a council's actions, rather than hearing a particular application as a fresh matter, would require the keeping of a detailed account of what took place at the municipal hearing. It has been pointed out that such an account would have to include verbatim transcripts of all oral evidence presented to council as well as all written evidence. Many municipalities have indicated that this is simply not feasible.

12.20 As indicated earlier, the government agrees with PARC that persons affected by a proposed planning matter should be able to have their concerns heard at a municipal council meeting before a decision is made. In municipalities where this is already being done, many contentious matters can be resolved, and the likelihood of subsequent appeals is reduced. In addition, and, as will be discussed more fully in the next chapter, the province has concluded that the role of the OMB should be more like that of an appellate body. It does not agree with PARC, however, that the grounds of appeal should be restricted.

12.21 It might be argued that these two proposals would cause some of the kinds of legal problems outlined above. The province, however, considers that the natural justice concerns associated with these proposals are adequately safeguarded by the provisions set out in this chapter together with the continued ability to have a full hearing before the Ontario Municipal Board. The procedures, when viewed in total, fall well within the spirit of *The Statutory Powers Procedures Act*.

12.22 The province has no wish to initiate a system which would require municipal councils to conduct OMB style hearings or keep verbatim records of council meetings. The type of meeting contemplated would be similar to that conducted by a planning board or council under the present process. This gives people a chance to air their concerns before a decision is made. Similarly, the kind of record which would be required under the new process would only include such matters as a list of submitted documents including any written objections, the names and addresses of persons notified on a planning matter and of the decision on that matter, and a copy of the approving authority's decision.

12.23 To remove any doubt as to the type of meeting to be conducted at the municipal level, the procedures set out in this chapter applying to municipal councils will be made exempt from *The Statutory Powers Procedures Act*. This will in no way prevent an aggrieved person from obtaining as full a hearing as necessary before the Ontario Municipal Board on appeal.

12.24 Lastly, as mentioned in Chapter 5, council may delegate the authority to notify affected persons and to hold a municipal meeting to a committee of council. Where council has delegated its approving authority, e.g., zoning variances to a committee of adjustment, it will also delegate the power to notify and hold a meeting.

Conclusion 62

Regulations will be issued that prescribe procedures for municipal meetings based on the following principles:

- **following the expiry of at least 21 days from when public notification was given, a municipal council (or committee to which council has delegated its powers) must hold an open meeting at which the public are invited to discuss the specific planning issue**
- **persons attending the meeting will be entitled to make representations**
- **the municipal clerk will be required to record information relating to the meeting (list of submitted documents, names of persons notified, copy of decision)**
- **once the above procedures have been complied with, a decision can be made.**

The regulations setting out the procedures for notification and for the conducting of public meetings by municipal councils will be exempt from the provisions of *The Statutory Powers Procedures Act*.

Right to Appeal

12.25 The province is concerned that in the past not enough importance has been attached to the role played by municipal council in making planning decisions. At present, an objector does not even have to discuss a possible objection with the municipality, and may merely write a one-line letter to the Board saying "I object" to the zoning by-law amendment, or other proposal in question. This simple process requires no real effort, but its consequences can be unfortunate. An appeal brings everything to an abrupt halt and causes a delay of several weeks or even months until a hearing by the Board can be arranged and held.

12.26 The province feels strongly that measures should be adopted to require more meaningful effort on the part of a potential objector before an appeal can be launched, as well as to ensure that the person is at least reasonably informed about council's side of the issue.

12.27 It has been concluded that a qualification should be placed on anyone wanting to appeal a planning decision of a municipal council to the Municipal Board. It will be required, therefore, that objectors will not be qualified to launch an appeal unless they (or their authorized agent) have first attended the municipal meeting dealing with the matter in question and have registered their names with the clerk. In this way, a reasonable restraint will be placed on those wishing to initiate an appeal and the vital part played by municipal council in the process will be placed in its proper perspective.

12.28 A copy of a decision must also be sent to any agency which has been consulted on a planning matter, thus automatically affording it the right to appeal.

12.29 Regulations will be issued prescribing the conditions and procedures under which persons or agencies may lodge an appeal. In addition, the regulations will indicate the process to be employed by a municipality to transfer the municipal record of the proceedings to the Ontario Municipal Board in the event of an appeal. These latter procedures will be similar to those used at present.

Conclusion 63

Regulations will be prepared indicating procedures for appeal based on the following principles:

- **within 7 days of a decision being made, the municipal clerk must send a copy of the decision to any person who registered with the clerk at the municipal meeting and any agency consulted on the planning matter**
- **only those persons, or their authorized agents, who attend the council meeting will be automatically afforded the right to appeal the decision to the Ontario Municipal Board within the specified time period**
- **any person wishing to appeal a municipal decision will be required to notify the municipal clerk, stating reasons in writing within the specified time period**
- **if upon the expiry of the time period for appeal, the municipality has received written notification of an appeal, the clerk shall send to the OMB[1] a copy of the appeal together with the name and address of the appellant and a copy of the information about the municipal meeting. If there is no appeal, council decision is final upon expiry of the time period**
- **upon receipt of the above information, the OMB will establish a date for a hearing, and will require those appealing, the municipality, and the applicant to be notified of the date of the hearing. Notification will include the names and addresses of all parties to the appeal**
- **persons notified of the appeal must be made aware that information on the appeal can be examined at the offices of the municipality or the OMB.**

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[1] In the case of an official plan, an appeal would actually be a request for the Minister to refer the plan to the OMB. In such cases, the clerk would send the required information to the Minister.

Rights of Community Associations

12.30 PARC recommended that residents' associations should be formally recognized by municipalities and should have the right to be notified of municipal planning proposals and to participate in any public meetings or appeal proceedings. Responses generally favoured the Committee's recommendations, although giving community associations more rights than individual citizens was questioned.

12.31 The province considers that whether such groups should be recognized or not is a local matter. Formal recognition in legislation would mean keeping an up-to-date municipal register, which is not easy. Some groups remain active, others disband, and still others come into existence only when a special issue arises.

Conclusion 64

Residents' associations will not be formally recognized in the Act, but may be recognized at the discretion of a municipality. Municipal planning proposals will be publicized in accordance with the regulations, and residents' associations should be given the same rights to make representation at municipal hearings as anyone else.

13 The Ontario Municipal Board

13.1 In keeping with its overall objective of strengthening local planning and increasing political accountability for planning decisions, PARC held that the role of the Ontario Municipal Board should be radically altered. It recommended that:

- the OMB should serve only as an appeal body for municipal planning decisions and should not conduct hearings *de-novo*
- the Board should not have the responsibility to make final decisions, but instead should conduct hearings and make recommendations to the Minister or the municipal council, depending on the circumstances of the appeal
- appeals from parties who object to a council's decision, or its failure to reach a decision, should be permitted only on the grounds that the council acted unfairly or unreasonably, or that it acted or failed to act on the basis of information or advice that was incorrect or inadequate
- the Board should not be responsible for determining provincial policy or the planning merits of any matter placed before it.

13.2 Not surprisingly, these propositions raised more controversy than any other matter in the PARC report. Perhaps in anticipation of this and of its major proposals being rejected, PARC put forward these alternative recommendations to improve the present system:

- to assist the Board and the Minister in screening out frivolous or trivial appeals or requests for referral, the Act should require that all such requests and appeals be accompanied by written reasons
- the Board's responsibility on matters referred to it by the Minister, planning disputes between municipalities, and appeals on Minister's zoning orders and Minister's consent decisions, should be to hold a hearing and submit its findings to the Minister for final decision
- the Act should allow zoning by-laws to come into effect automatically if there are no objections
- if the Board continues to approve zoning by-laws, the Act should establish matters the Board should take into consideration in reaching its decisions.

13.3 Public reaction to the suggestions for major reform was mixed. Many responses agreed with the problems identified with the OMB process, but most did not agree with PARC's way of solving them. They wanted to keep the Board in essentially its present role but improve the way it operates. Three major concerns emerged:

- the recommended procedures would be too time consuming and costly
- an independent, impartial tribunal is necessary for the protection of private rights
- local councils could not reasonably be expected to manage the onerous municipal hearing requirements embodied in the proposal.

13.4 The Ministry of Housing, in recognizing the significance of the major proposals, commissioned an independent analysis of PARC's recommendations on the role of the Ontario Municipal Board[1]. This study, together with other submissions, identified some further areas of concern relating to the nature of municipal meetings and the keeping of a record of such meetings, as outlined in Chapter 12.

13.5 On the basis of these concerns, the province decided at a fairly early stage that PARC's recommendations for radical change to the OMB could not be accepted. Subsequent investigation turned to ways of streamlining the process and eliminating unnecessary procedures, while keeping the powers of the Board basically unchanged.

13.6 In looking at alternative ways to improve the system, the Ministry established the following objectives, based partly on PARC's objectives, partly on suggestions made in the public response, and partly from its own experience with the Board:

- to generally speed up the approval and hearing process
- to place a greater emphasis on the decisions of municipal council
- to cut down, wherever possible, the number of irresponsible appeals made to the OMB
- to provide better procedures for quicker disposition of a matter once an appeal had been lodged.

13.7 The province's proposals, set out below and in Chapter 12, have been discussed with representatives from the Municipal Law Section of the Canadian Bar Association's Ontario Branch, with representatives from municipalities, the development industry and other professionals, and with the Board itself.

Importance of Council Decisions

13.8 Three conclusions made in Chapter 12 on public involvement will have the effect of placing more emphasis on a council decision. These are:

- that a municipal council must notify affected persons *before* a decision is made on a planning matter
- persons wishing to object must be given the chance to appear before council or a council committee
- to establish the right to appeal, a potential objector, or his agent, must attend the council meeting and register with the clerk a request to obtain a copy of the decision.

[1] Background Paper 2 *Some Legal Implications of the Planning Act Review Committee Report,* G. J. Smith, Q.C., Weir & Foulds.

13.9 It has also been concluded that *The Ontario Municipal Board Act* should be amended to reflect that a municipal decision should be assumed by the Board to be the appropriate one unless proven otherwise. The onus would then be on the appellant to demonstrate why the decision made by the municipality was *not* appropriate.

13.10 This would mean that the *objector* normally would be required to lead off at the OMB hearing and present arguments against the municipal decision, rather than the other way around, as now usually happens. Considerable time should be saved, particularly at major hearings, by eliminating the need for the municipality to first justify the basis of its decision before objections are heard. The proposal will again emphasize the importance of the municipal decision.

Conclusion 65

In addition to the proposed procedures for notification and hearing by municipal councils, *The Ontario Municipal Board Act* will make it clear that, when an appeal has been made on a planning matter, the Board should assume that a municipal decision is appropriate unless proven otherwise to the Board's satisfaction.

The Board's procedures will be changed to require that, under normal circumstances, the objector or objectors should be the first to present their case at a Board hearing.

Requirements for Appeal

13.11 Chapter 12 proposed that only those people or their agents who actually appeared at the municipal meeting and registered with the clerk be afforded the automatic right to appeal. One further requirement is needed. Any appellant, when appealing a municipal decision or requesting that a matter be referred to the Board, should state the grounds and reasons of the appeal in writing. This was recommended by PARC and overwhelmingly supported by the public.

13.12 It is also proposed that any person who is not a formal party to an appeal should continue to have the right, at the Board's discretion, to make representations at a hearing, but should not be permitted to call any witnesses in support of their position.

Conclusion 66

Any person appealing a decision of a municipal council and requesting that a matter be referred to the Ontario Municipal Board will be required to state the grounds of appeal in writing.

Any person who has not established or been granted formal appellant status will continue to have the right, at the Board's discretion, to make representations at a hearing but will not be permitted to call witnesses in support of the appeal.

Elimination of De Novo Hearings

13.13 One of PARC's main recommendations was that the Board should not conduct hearings *de novo*. Public reaction to this proposal was rather uneven.

13.14 This same recommendation, in fact, was made by the Select Committee on the Ontario Municipal Board in 1972. That report indicated that the *de novo* requirements derive from sections 62 and 68 of *The Ontario Municipal Board Act* which among other things require the Board to inquire into the necessity and expediency of an application and to not grant approval unless satisfied that the application is justified in all circumstances.

> In other words, whenever it is faced with an application, the Board must start from scratch, so to speak, and explore all the ramifications of an application, almost as though nobody had even considered the pros and cons until then. The Board is not free . . . to treat the application as if it were an appeal from a council decision.[2]

These requirements have a significant impact on the nature and extent of OMB hearings, especially when a complex planning matter, such as a new official plan, is involved. For example, because the Board is not free to define the issues of a hearing, it is difficult for anyone, including the Board, to know in advance what the major issues are likely to be. As a result, considerable time has to be spent in the hearing, particularly by the municipality, in establishing the basis of its decision so as to take account of any likely issue that might be raised by an objector. The *de novo* requirement not only places too much authority in the hands of the Board, but also indirectly contributes to lengthy hearings because it is very difficult to prevent evidence unrelated to the issue from being presented.

13.15 The government agrees that procedures before the Board could be significantly improved if the *de novo* requirement was eliminated. To do this, *The Ontario Municipal Board Act* should be amended to more closely define the investigating powers of the Board so that it only deals with the substance of objections. On the basis of the stated grounds of appeal and the record of the municipal meeting the Board would be given the discretion to define in advance the issues that will be the subject of the hearing. Once these have been established, parties to the appeal would be prevented from introducing a new issue during a hearing unless special leave from the Board has been granted. The Board, if all the parties agree, would also be allowed to settle the appeal without holding a hearing, or if the grounds are found to be insufficient, it would be permitted to dismiss the appeal.

13.16 This power should be helpful in dealing with complex and controversial matters but will not really affect the relatively straightforward types of appeal that form the largest percentage of issues coming before the Board. It is the controversial matters, however, that can stretch over many days, and, in some cases, many weeks of hearings. It is expected, then, that these changes will permit a considerable saving of the Board's total available time.

Conclusion 67

***The Ontario Municipal Board Act* will be amended to charge the Board with examining the issues of an appeal, rather than considering all of the merits of a matter before it.**

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2 *Report of the Select Committee on the Ontario Municipal Board,* 1972, p. 6.

The Act should empower the Board, at its discretion, and on the basis of the record of the municipal meeting and the appellant's written grounds of appeal, to establish the issues which will be the subject of a hearing. Once the issues have been established, parties to the appeal would be prevented from introducing a new issue unless the Board grants them leave to do so.

The Board will be empowered to dismiss an appeal if, based on the information before it, the grounds of appeal are found to be insufficient. Similarly, the Board, on the basis of the evidence and with the agreement of all parties, will be empowered to settle an appeal without holding a hearing.

Changes to Appeal Procedures

13.17 The Board will be encouraged to make more use of its power to hold preliminary hearings, which can be instituted by the Board itself or by any party. For major appeals this would help to define more closely the issues to be heard at a full hearing. In other cases it may also enable the Board to settle some matters without the need to conduct a full hearing. Preliminary hearings can also help discourage or curtail frivolous appeals or appeals which are subsequently shown to have no merit.

13.18 Also, to further discourage persons from appealing and then failing to appear at a hearing, section 96 of *The Ontario Municipal Board Act* will be amended to extend the Board's ability to award costs. Objectors would be notified when they submit their appeals that the filing of an appeal is a commitment to appear at the Board hearing and that they could be assessed costs by the Board for non-appearance.

Conclusion 68

To define more accurately the issue of a hearing the Board should make greater use of its power to hold preliminary hearings. As a means of discouraging frivolous or irrelevant objections, the authority of The Ontario Municipal Board will be extended to permit it to levy costs against persons who have caused a Board hearing that they do not attend.

13.19 Another concern of the government is the need to improve the process of dealing with relatively minor matters that take up too much of the Board's time, time that could be spent on more significant issues. These minor matters are related to appeals from decisions of land division committees and committees of adjustment dealing with consents and minor variances.

13.20 A consent is required where an owner wishes to separate a parcel of land from his holdings in order to sell it, mortgage it, or lease it for more than 21 years. Consents are now usually obtained from locally appointed committees of adjustment or land division committees and decisions are required to be in conformity with municipal development policies set out in the official plan and zoning by-law.

13.21 A committee of adjustment also has the power to authorize minor variances from the provisions of a zoning by-law if, in its opinion, the general intent of the by-law and the official plan is maintained. Variances are granted, for example, to give permission to build a house on a lot that is only 49 feet wide where the by-law requires a minimum of 50 feet.

13.22 Individual consent and minor variance decisions are usually *not* of provincial significance, and because decisions must be in keeping with official plans and zoning by-laws, land division committees and committees of adjustment have but limited discretion.

13.23 In its annual report for 1976 the Ontario Municipal Board drew attention to the dramatic increase in the number of consent and minor variance appeals that were coming before it and to the growing amount of the Board's time spent on these relatively minor matters. In pointing out what it saw as "a serious problem" the Board said that "it is unfortunate that a great many of these appeals are withdrawn or abandoned after they have been almost processed. A great many of them are frivolous or unconsidered".[3]

13.24 Response to the Planning Act Review Committee also revealed a wide-spread concern that the appeal process is too cumbersome and time consuming. Most people felt that the major reasons for this were the number of frivolous objections that were brought before the Board and inadequate mechanisms for screening such objections.

13.25 Research by the government in 1977 confirmed these views. Applications, appeals and referrals of all kinds under *The Planning Act* now account for most of the Board's workload which has increased markedly in the last five or six years. In 1972 some 3,111 planning matters were received by the Board, but by 1976 this had increased by 84 per cent to a total of 5,731.

13.26 In response to this alarming growth in workload the Board has continually refined and improved its administrative procedures and the government has increased the size of the Board several times so that it now has 27 members. In spite of this, the Board has been unable to keep pace.

13.27 Most of the increased workload stems from appeals of committees of adjustment and land division committees' decisions. While the total number of applications submitted to such committees did not change substantially between 1972 and 1976, the number of appeals to the Board rose drastically by 80 per cent to 2,205. These appeals accounted for about 40 per cent of all planning applications.

13.28 Significantly, more than 40 per cent of the consent appeals between 1972 and 1976 were found to be invalid on technical grounds. That is, they were not in conformity with local development policies expressed in the municipality's official plan and zoning by-law. Such appeals are dismissed by the Board automatically.

13.29 The problem is that this vital information[4] cannot now be determined until the actual hearing is held. This means that the time of one Board member, and perhaps two, is taken journeying from Toronto to such distant places as Kenora or Renfrew in order to hold a hearing that too often is unnecessary. At an average of 1½ days per hearing, the total time to deal with these defective appeals is roughly equivalent to six man-years. If this time could be spent on more pressing matters, the entire planning process before the Board could be improved.

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[3] *OMB Annual Report 1976,* page 3.

[4] On over 1000 appeals in 1976.

13.30 The province's research revealed more distressing statistics. Of the approximately 1800 consent appeals lodged with the Board in 1976, 37 per cent were subsequently withdrawn, most of them after a hearing date had been set. A further 8.5 per cent resulted in nobody appearing at the hearing, causing an automatic dismissal of the appeal.

13.31 These facts demonstrate that about 80 per cent of all hearings on consent appeals in 1976 were unnecessary because of technical defects, withdrawal of the appeal or because no-one bothered to show up at the hearing.

13.32 In 1972 the Select Committee of the Legislature on the Ontario Municipal Board commented that consent and minor variance matters were more purely local in scope than other types of planning applications. The Committee stated that such matters were causing an administrative problem out of all proportion to their importance and that many appeals did not need a full hearing. The Select Committee concluded that these minor appeals should be screened at an informal preliminary hearing in Toronto where applications not requiring a full hearing could be dealt with quickly.

13.33 After careful consideration, the government has concluded that the overall effectiveness of the Municipal Board will be greatly increased if a screening process is instituted to eliminate the burden of those consent and minor variance appeals that are clearly defective.

Conclusion 69

The legislation will require that anyone wanting to appeal a consent or minor variance decision must seek leave to appeal from the Municipal Board by submitting to the Board an application setting out the facts in support of the appeal.

The Board will be empowered to deal with an application for leave to appeal without holding a public hearing. If an appeal is found to have merit, leave would be granted and a hearing scheduled in the normal manner. On the other hand, if the Board found that the appeal was without merit, leave to appeal could be denied. The Board would be required to give written reasons for such a denial.

Petitions to Cabinet

13.34 Section 94 of *The Ontario Municipal Board Act* presently allows any party to file a petition to Cabinet within 28 days of any order or decision by the Board. Cabinet may rescind, vary or confirm the Board's decision or order an entirely new hearing. Any re-hearing is not subject to petition.

13.35 Petitions to Cabinet have increased markedly since the early 1970's, with some petitions being automatically launched when an unfavourable Board decision is received. There was only a total of 16 petitions in the entire period from 1957 to 1967, but in 1970 alone there were 17 petitions, and 33 in the following year. Significantly, between 1975-77 the annual number has averaged 60. About one third each concerned land severances and zoning by-laws. The remaining one third concerned other matters such as official plans, subdivisions, capital expenditures and annexations. In 1978 the number of petitions rose dramatically to 143.

13.36 The Legislature's Select Committee on the Ontario Municipal Board noted that "Some appeals are of a substantial nature and should be dealt with as policy matters by a political body such as Cabinet. However, most are not matters of sufficient significance to warrant the Cabinet's consideration."[5]

13.37 This White Paper sets out the provisions for applicants to be given a fair hearing by a local municipality and the continued right of appeal by aggrieved parties to the Ontario Municipal Board. With such provisions, an automatic right to petition Cabinet seems unnecessary.

13.38 The original reason for such petitions was to enable the Cabinet to review provincial policy issues related to specific Board decisions. Instead, it has become a second level of appeal with formal written submissions and requiring the entire Cabinet to devote valuable time to examine the details of specific cases. Often, the issues in dispute, while very important to a local council or to affected individuals, do not have any real provincial significance. This is especially true of small-scale changes to official plans and zoning by-laws where only a single building lot may be involved.

Conclusion 70

The Ontario Municipal Board Act will be amended to delete the present provision allowing for a petition to Cabinet on planning matters. _The Planning Act_ will be amended to permit the Minister of Housing to designate a matter to be heard by the Board as being of provincial significance. Such a designation would be made before a hearing takes place. When so designated, the Board will conduct a hearing and recommend back to the Minister of Housing for final decision. In all other planning matters the decision of the Ontario Municipal Board will be final, and no petition to Cabinet will be permitted.

[5] *Report of the Select Committee on the Ontario Municipal Board,* 1972, p. 6.

VI: Miscellaneous Provisions

14 Development Standards and Requirements

14.1 PARC expressed particular concern about the wide variations in development standards and requirements used by municipalities when approving development proposals. In many cases, the result has been excessive demands and inequities in the way existing and future residents are treated.

14.2 In addition, the municipal fees charged for processing various types of development proposals are inconsistent. These differing practices lead to public confusion and sometimes inequities not only between municipalities but occasionally within the municipality itself.

Development Standards

14.3 PARC proposed that the Minister specify the range of development standards that could be applied in a consistent manner to all of a municipality's planning instruments. It recommended that regulations deal both with planning standards, such as density and lot coverage requirements, and engineering standards, which would indicate specifications for road widths, sewage and water services, and so forth. The public response varied widely. Those in favour included some local municipalities and representatives of the development industry, whereas some counties and regions were opposed.

14.4 The province agrees that there should be more consistency in development standards across the province, while recognizing that what is good for say, Windsor may not necessarily be good for Sudbury.

14.5 The province is mostly concerned with what are really excessive standards. Rather than accepting all of PARC's recommendations, the government proposes to establish, by regulation, a range of province-wide development standards which municipalities would be required to take into account when developing their own planning standards in zoning by-laws and other instruments or agreements.

14.6 The type of standards contemplated were outlined in a 1976 publication of the Ministry of Housing[1] and affect the density of development and the delivery of affordable housing to a wider segment of the population. The Minister would review the appropriateness of local standards within the context of the regulation.

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[1] *Urban Development Standards,* Ontario Ministry of Housing, March 1976.

Conclusion 71

The Act will authorize the Minister to prepare regulations governing development standards. In addition, the province will continue to review the appropriateness of municipal planning standards as part of its monitoring role.

Discriminatory Zoning

14.7 Over eighty per cent of the responses from municipalities and social planning agencies endorsed PARC's proposal that the Act prohibit municipalities from engaging in exclusionary zoning or planning practices that prohibit the occupancy of dwellings or sections of a municipality on any basis other than density.

14.8 The government recognizes that the use of exclusionary zoning practices can discriminate against special groups in the population. While acknowledging that the use of zoning to restrict the occupancy of a dwelling to "families" in the normal sense has so far been upheld as a valid practice by the Court of Appeal, it agrees with PARC that this is an unsupportable municipal practice.

14.9 The province considers that imposing limits on the number of persons who can occupy a dwelling in certain circumstances is a legitimate municipal concern in the protection of public health standards. The Act generally will provide that zoning by-laws can only be used to regulate the number of persons living in a dwelling by prescribing an occupancy standard specifying the minimum amount of space per person per dwelling unit.

14.10 However, municipalities should still be able to provide in their zoning by-laws for such uses as adult-only buildings and senior citizens' housing which by their definition involve restriction of occupancy to a particular group of persons.

14.11 Exclusionary municipal zoning has also restricted the establishment of group homes in many parts of the province. The government actively supports this concept of community living for children and adults who require specialized care in a family atmosphere. Many municipalities have been receptive in making provision for group homes, while at the same time wanting to ensure that neighbourhoods would not be disrupted by a concentration of such facilities.

14.12 A provincial report on group homes was sent to all municipalities in September 1978.[2] This report addresses, among other things, the question of land use policies and zoning standards related to this type of use.

14.13 Based on the proposals contained in the report, the Ministry of Housing has prepared official plan and zoning guidelines to encourage municipalities to provide for group homes.

Conclusion 72

The Act will provide that zoning by-laws will be permitted only to regulate the number of persons living in a dwelling by prescribing an occupancy standard, i.e., minimum space per person.

However, the Minister will be authorized, by regulation, to still allow municipalities to zone specific sites for such special facilities as adult-only buildings and senior citizen homes.

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[2] Province of Ontario, *Group Homes: Report of the Interministerial Working Group*, 1

Municipalities will be encouraged to adopt official plan and zoning policies that allow group homes as a permitted use in all residential areas, subject to distance separation standards.

Municipal Application Fees

14.14 Public response was divided on PARC's proposal that the Minister establish, by regulation, the maximum fees to be charged by a municipality for the processing of all planning applications. Those who disagreed stressed the need to recognize local variations and the interference in local autonomy.

14.15 The province has studied the range of processing fees currently being charged by municipalities. While most are reasonable, some municipalities charge excessive amounts. For example, in some instances a charge of $2,000 or more is made for processing applications to amend an official plan, and up to $42 per lot for processing a proposed plan of subdivision. Some municipalities not only charge a fee but require the applicant to pay all the municipal costs if a hearing before the OMB is required. This in itself could amount to thousands of dollars. This kind of approach suggests that the processing of planning applications seems to be viewed by some municipalities as a favour being bestowed by them rather than a service of local government.

14.16 While charging a fee may help to defray municipal operational costs and deter the submission of frivolous applications, the province believes that processing development proposals must basically be regarded as a municipal service and fees charged should not be on a cost-recovery basis.

14.17 The government, therefore, will establish by regulation a maximum charge for all municipal planning fees.

Conclusion 73

The Act will enable the Minister, by regulation, to set the maximum charge for all municipal planning fees.

Lot Levies

14.18 The controversial issue of lot levies, or impost charges, as they are sometimes called, cuts across the entire field of municipal financing and is not being dealt with in this White Paper. A provincial policy on the use of such charges is being investigated by the Ministries of Treasury and Economics, Intergovernmental Affairs, and Housing. At the time this White Paper went to print an early amendment to *The Municipal Act* was anticipated.

15 Land for Public Use

Compensation

15.1 In considering whether compensation should be paid for loss of the right to the full use of privately owned land, PARC supported the present legal position that property owners need not be compensated for damage from "injurious affection caused by the imposition of those planning controls and regulations that are clearly authorized by provincial legislation".[1]

15.2 Generally speaking, municipalities can downzone land or change land uses without paying compensation, provided they do not act in a discriminatory manner or in bad faith. Judicial remedies, or the seeking of redress through the Ontario Municipal Board, are available for people who feel that a municipality's planning actions have confiscated or severely reduced the value of their land.

15.3 PARC's position brought a mixture of public response. Municipalities generally favoured retaining the status quo. Development interests felt either that compensation should be paid or that the matter should be studied further. The government has consistently stated that the existing law in Ontario should continue to apply in this area and sees no new evidence to suggest why this position should be changed.

Conclusion 74

No change will be made to the present legal position on the payment of compensation.

Recourse to the courts and OMB will continue to be available to property owners affected by municipalities which act in an arbitrary or unfair manner or in bad faith. The interests of property owners will be further safeguarded by improvements to planning procedures and controls.

Land for Public Purposes

15.4 The provision of land for public purposes raises two issues:

- the ability of a municipality or other public agency to reserve land for future acquisition

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[1] *PARC Report*, p. 135.

- the determination of the price at which land will be conveyed for public purposes or the price to be paid in lieu of dedication of land.

The government agrees with PARC that the present provisions for dedicating public parks and roadways through subdivision approval conditions are satisfactory, and that those for reserving land for school sites and other public purposes need to be formalized. On the second point, PARC recommended that municipalities be given the power to zone properly identified private lands for public purposes for a maximum period of three years, following which, if the land has not been acquired for the public use, an alternatively zoned use would automatically come into effect.

15.5 Public reaction generally favoured giving municipalities the power to zone private land for future public purposes, but 48 out of 49 school boards did not accept the proposed three year limit. The province feels that a balance can be struck between the two positions.

15.6 It is agreed that the current ad hoc approach for reserving land for public purposes should be formalized by giving municipalities the power to zone such land for a three year period. The zoning of the property would show an alternative private use which will automatically come into effect on the expiry of the time period, or earlier if the municipality or other public agency decides not to acquire it.

15.7 To prevent abuse of this power, the public agency reserving the land will be required to take out an option to purchase, and to deposit a fee of 10 per cent of the appraised value of the land which the agency will lose if it eventually fails to purchase it. Once land has been acquired, the purchasing agency will be prohibited from selling or using it for other purposes for five years.

15.8 To resolve the school boards' problems with the three year time limit, municipalities will be able to extend the reservation period for up to three more years where the need can be demonstrated. A school board would be able to apply for a time extension where it has been unable to establish a need to purchase a reserved site at the expiry of the initial time period. In deciding whether such an application should be granted, municipalities will consult with the Ministry of Education. The by-law reserving the land and any subsequent extensions of it will be subject to the normal requirements of notification, hearing and appeal.

Conclusion 75

Municipalities will be authorized to zone private land required for public purposes for a period of up to three years, extendible for a further three year period. The zoning by-law shall show both the future public use and the alternative private use which will automatically come into effect in the lapsing of the time period if the land has not been purchased for its intended public use.

The public agency reserving the land will be required to take out an option on it and deposit a fee of 10 per cent of its appraised value. Once the land has been purchased, the acquiring agency will be prohibited from selling the land or using it for other purposes for a period of five years from the date of purchase.

15.9 PARC found little consistency in prevailing practices for determining the valuation of land to be conveyed for public purposes and the amount to be paid in-lieu-of land dedication. In the interests of equity, PARC recommended that the Act require that the price of land to be conveyed by way of a rezoning agreement be based on its value immediately prior to the date the zoning by-law was adopted, and for subdivisions immediately prior to the date of draft approval. PARC concluded that the calculation of payments to be made in-lieu-of dedication should be based on the value of the lands immediately following their approval for development.

15.10 Reaction to this was mixed. Public bodies generally felt that the proposal would result in a substantial increase in the cost of acquiring land for public purposes. Development interest groups disagreed chiefly on the grounds that the value should be set at some time following draft approval. Some suggested that valuation for cash-in-lieu should be on the same basis as for conveyance of land.

15.11 Having examined the arguments from all sides, the province agrees that the current inconsistent practices should be rationalized, and in the interests of equity, the date of valuation of the land made constant.

15.12 The province does not agree, though, that the valuation date for determining cash-in-lieu and conveyance should be different. The date of valuation for all purposes should be fixed as immediately prior to the granting of planning approval. This date would not reflect the added value accruing as a result of the planning approval, but it would remove inequities to landowners that result from current vagaries of negotiation.

Conclusion 76

The Act will require that the price of land to be conveyed for public purposes, or the price to be paid in-lieu-of dedication of land, is to be based on its value immediately prior to the date of draft approval of a subdivision plan, or immediately prior to the date of the passing of a zoning by-law authorizing the development.

16 Other Provincial Legislation

16.1 *The Planning Act* does not stand in isolation. Both the PARC Report and this White Paper have made proposals about other Acts that have a direct bearing on the planning system. This Chapter draws further conclusions about specific acts and sums up the points raised in other chapters.

The Environmental Assessment Act

16.2 Although it received Royal Assent in July, 1975, *The Environmental Assessment Act* did not begin to take effect until October 20, 1976 when it was partially proclaimed by the Lieutenant Governor and regulations were published phasing in the application to public undertakings, including those of the province. The portion of the Act relating to private undertakings came into force on January 16, 1977, enabling it to be applied "to major commercial or business enterprises or activities, or proposals, plans or programs in respect of major commercial or business enterprises or activities of any person or persons" that are individually designated by regulation.

16.3 *The Environmental Assessment Act* establishes a process by which the impact on the environment of various classes of public and private undertakings is to be determined *before* such undertakings are allowed to proceed. This assessment must demonstrate the environmental advantages and disadvantages of proceeding with a proposed undertaking, of proceeding in other ways, or of the alternatives to the proposal. "Undertakings" are very broadly defined as meaning projects, enterprises, activities, plans or programs. Environment is also broadly defined as including not only the natural and physical environment, but "the social, economic and cultural conditions that influence the life of a man or a community".

16.4 The Act establishes procedures for proponents to submit environmental assessments to the Ministry of the Environment. It also provides for hearings where necessary by the independent Environmental Assessment Board and for final approval by the Board, the Minister or the Cabinet, depending on the circumstances.

16.5 There has been a good deal of concern over potential overlap in the application of processes for environmental assessment and municipal planning, and

the publication of the PARC report brought many of these concerns into clearer focus. In fact, PARC's scrutiny of the municipal planning system led it to raise its own general concerns about the scope of *The Environmental Assessment Act* and specific concerns about its possible effect in the operation of municipal planning. The report made some recommendations on this and pointed out four areas for further government study:

- the conflicting philosophical framework of the two Acts
- the definition of "environment" in *The Environmental Assessment Act*
- the possibility of municipal official plans coming under *The Environmental Assessment Act*
- the duplication of hearings by the Ontario Municipal Board and the Environmental Assessment Board.

16.6 Using PARC's proposals as a starting point, the Ministry of Housing and the Ministry of the Environment worked together to sort out the relationship between the two Acts. Three principles emerged from this review:

- natural environment considerations should become an integral part of the administration of *The Planning Act* at the municipal and provincial level
- *The Environmental Assessment Act* should be applied only to those municipal and private undertakings where it is in the provincial interest to do so
- where duplication, conflict or overlap is evident, a "streamlining" solution should be developed.

To prevent private proposals from undergoing a dual approval process, an agreement was worked out between the Minister of Housing and the Minister of the Environment establishing the following positions.

16.7 *Burden of Proof* The burden of proof in development proposals will remain a shared responsibility, as it is under the current Act. This means that applicants for approval under *The Planning Act* would present their evidence, and persons or authorities reviewing or opposing the application would present theirs. The matter would then be decided on the evidence, without any presumption as to whether the approvals should or should not be given, and without attaching any burden of proof to either side other than the onus to establish one's case by adequate evidence.

PARC's recommendation, then, to place the burden of proof on the approving agency is rejected.

16.8 *Definition and Consideration of "Environment"* The broad definition of "environment" in *The Environmental Assessment Act* should be retained, as it permits all relevant factors — social, economic, and natural environmental — to be comprehensively considered for those undertakings made subject to *The Environmental Assessment Act*.

16.9 Similarly, the new Planning Act will treat natural environmental factors as it does social and economic factors, that is, as distinct but interrelated elements to be routinely considered within the municipal planning process. In this way, natural environmental concerns will be included among the many items to be taken into account in making planning decisions, but will not be singled out by specifying in the Act how these concerns are to be described and evaluated.

16.10 The responsibilities of other Ministries in considering the natural environment, as well as social and economic matters, will be carried out administratively rather than through specific legislation.

16.11 "Natural environment" is understood to include air, land, water, and plant and animal life.

16.12 *Official Plans* *The Environmental Assessment Act* should not be amended, as suggested by PARC, to exclude official plans or related planning instruments from its purview. While *The Planning Act* should continue to be the principle medium for the approval of official plans and related planning instruments, in certain circumstances such planning instruments that are related to particular undertakings may need to be dealt with as part of an environmental assessment under *The Environmental Assessment Act*.

16.13 The Ministry of the Environment will continue to receive proposed official plans for comment, so that provincial interests in the natural environment may be safeguarded at the policy-making stage of municipal planning.

16.14 *Application of Environmental Assessment Act to Private Development* *The Environmental Assessment Act* by its own provisions, does not apply to any private development unless the following three steps are taken:

- a proclamation of the Lieutenant Governor is made[1]
- the private development or class of activity is defined by regulation as a major commercial or business enterprise or activity
- the specific enterprise or activity, or class of activity, after it is defined by regulation as a major commercial or business enterprise or activity, is designated by regulation as an undertaking to which the Act applies.

16.15 *The Environmental Assessment Act* will be made applicable only to private undertakings that are determined by Cabinet to be of major or provincial significance. The great majority of private developments will *not* be of this magnitude and so would remain subject only to *The Planning Act*.

16.16 Further, while *The Environmental Assessment Act* provides for private undertakings to be brought under it, either individually or by class, it will be government policy that a generic application will not be used for normal urban commercial, industrial or residential development such as shopping centres, residential subdivisions and manufacturing facilities that pose no special environmental hazard. Instead, the Act would be applied to classes of undertakings of provincial significance with obvious environmental effects as, for example, new pulp mills, oil refineries, or steel plants.

16.17 Where a proposed large-scale development, such as a steel plant, is designated as subject to *The Environmental Assessment Act*, associated residential, commercial and other related uses will not necessarily be brought under the Act as well. Even in those rare cases where such related uses are specifically designated, it will be government policy to lift the designation as quickly as possible so that any planning instruments applying to the lands can be brought back under the normal processes of *The Planning Act*. In essence, then, each case of this kind will be judged on its merits, and a decision made accordingly as to the scope of a specific designation.

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[1] Proclaimed on January 16, 1977.

16.18 *Streamlining for Private Undertakings* *The Planning Act* will be amended to provide that where a private undertaking is designated under *The Environmental Assessment Act*, normal planning approvals currently required for plans of subdivision or condominium, official plan amendments and zoning by-laws would become the responsibility of the decision-making authority under *The Environmental Assessment Act*. This body would be either the Environmental Assessment Board, whose decisions are subject to review by Cabinet or, where no hearing is required, the Minister of the Environment, whose decisions are made with Cabinet approval.

16.19 This means that *The Planning Act* will state that zoning by-laws, official plan amendments and, if required, plans of subdivision or condominium are to be submitted to the Environmental Assessment Board when it is considering an environmental assessment for the subject undertaking.

16.20 *The Planning Act* will be amended to provide that a decision under *The Environmental Assessment Act* on any of these planning instruments for a designated private undertaking will stand in place of a decision by the Minister of Housing or the Ontario Municipal Board. No hearing before the Municipal Board will be required. The applicant will have only to undergo one comprehensive review process and one possible hearing. All the matters relevant under either Act will be addressed in this consolidated approach.

16.21 The Ministry of Housing will continue to provide technical advice to the Ministry of the Environment and, if necessary, to the Environmental Assessment Board on any planning matters related to a designated undertaking. The Ministry of Housing will also be involved in the review of the environmental assessment for the undertaking.

16.22 Where instruments under *The Planning Act* are being considered in this way, the order of their consideration will be at the discretion of the Minister of the Environment or, where a public hearing is required, the Environmental Assessment Board. Depending on the circumstances, all of the matters may be considered together or in sequence.

16.23 *Streamlining for Public Undertakings* Where a public undertaking, such as a municipal waste disposal site, is subject to *The Environmental Assessment Act* and also requires approvals under *The Planning Act*, the amended Planning Act will provide that the same streamlining arrangements as set out for private undertakings will apply.

Conclusion 77

The Environmental Assessment Act will continue to be applied only to _major_ private undertakings designated by Cabinet. Most private undertakings will be subject only to _The Planning Act_ which will take the natural environmental concerns for air, land, water, and plant and animal life into consideration in the same way as social and economic factors.

For _private_ undertakings designated under _The Environmental Assessment Act_, the approval of related municipal planning documents under _The Planning Act_ will become the responsibility of the decision-making authority under _The Environmental Assessment Act_. For such projects, no hearing before the Municipal Board will be required, and the proposal will be subject to only one comprehensive hearing.

Where a *public* undertaking is subject to *The Environmental Assessment Act* and also requires approvals under *The Planning Act*, the same "streamlining" arrangements will apply.

The Ontario Energy Board Act

16.24 PARC recommended that the Ontario Energy Board be required to consult with every affected municipality about its planning requirements before deciding on a proposal to construct a pipeline.

16.25 Only two public responses commented and both endorsed this recommendation. Chapter 4 stated that regulations will be issued under *The Planning Act* requiring provincial ministries and other public agencies to take municipal planning policies into account in developing their own programs and to consult wth affected municipalities before carrying out any proposed undertakings. There is no reason why this principle should not be extended to approvals of pipelines. The PARC proposal is therefore accepted.

Conclusion 78

***The Ontario Energy Board Act* should be amended to require the Board to consider municipal planning requirements before making a final decision on an application for approval of a pipeline.**

16.26 Other Acts

- *The Public Transportation and Highway Improvement Act*

The general power under the above act for counties and regions to zone within 150 feet of a county or regional road will be discontinued and replaced with power under *The Planning Act* to allow upper-tier municipalities to become direct parties to subdivision and zoning agreements. (Chapter 6)

- *Ontario Building Code*

As a result of discussions with the Ministry of Consumer and Commercial Relations, it has been agreed that the current sections 38 and 39 of *The Planning Act* will be repealed. These provisions are more appropriate in the Ontario Building Code and the proposed fire and maintenance code. (Chapter 11)

- *The Ontario Municipal Board Act*

The revised role for the Ontario Municipal Board will require some specific changes to *The Ontario Municipal Board Act*, including a provision to charge the Board with examining the issues of an appeal rather than considering all the merits of the matter. (Chapter 13)

- *The Municipal Act*

The powers contained in section 354(1) of *The Municipal Act* relating to the control of signs should be transferred to *The Planning Act*. (Chapter 11)

17 Regulations, Circulars and Guidelines

17.1 In dealing with the provincial role in municipal planning, Chapter 4 said that the province intends to put increased effort into elaborating its own adopted policies and providing more information and guidance to local governments. The major way of doing this will be to publish, together with the new Planning Act, a number of regulations, policy circulars and planning guidelines.

17.2 References to these circulars, guidelines and regulations appear throughout the White Paper. This chapter simply brings them together and elaborates on their content.

17.3 The regulations, circulars and guidelines will be published in a way that clearly identifies them as a formal part of the total planning system. Municipalities and other designated bodies or agencies will be required to keep the regulations and circulars on file for public inspection and to follow and have regard for them in their day-to-day planning activities.

17.4 The most essential of these will be published simultaneously with the new Planning Act. They will be added to over time as the need arises — particularly the planning guidelines which will likely be published on a fairly regular basis. Policy circulars will be prepared by the Ministry of Housing by itself or jointly with other ministries as new provincial policies affecting municipal planning are developed.

Regulations

17.5 Regulations issued under the authority of *The Planning Act* are an extension of the legislation itself and have the force of law. They deal primarily with procedural details for such matters as the operation of the planning process, provisions for public notification, hearing and appeal on planning applications, and for the circulation of planning documents to affected agencies. Some specific examples follow.

17.6 *Procedures for delegating planning powers by a municipal council to appointed committees or officials* This regulation will establish procedures for the delegation of planning powers by a municipal council to a planning committee of council members, a municipal official, a committee of adjust-

ment or a land division committee. It will stipulate that the terms and conditions of any delegation must be contained in a municipal by-law and will specify the exact scope of the powers being delegated and the procedures to be followed by the delegate. It will also establish the basis on which either an individual item or the power itself may be recalled by council.

17.7 *Procedures for circulating specified planning instruments* This regulation will prescribe the procedures and conditions for the circulation of specified planning applications — primarily official plans, plans of subdivision and consent applications. It will standardize and consolidate procedures which are currently followed under the official plan and subdivision approval process and will apply equally whether the Minister or a delegate is the approving authority.

17.8 The regulation basically will provide for a list of agencies to which all applications must be circulated and another list to which an application may be circulated at the discretion of the approving authority. It will stipulate that agencies must respond within 30 days with provision for one extension for a specified period of time and that after the expiry of the circulation period, an approving authority may proceed to make a decision[1].

17.9 *Procedures for notification, hearing and appeal on specified planning instruments* This regulation will establish procedures for specified planning actions. It will standardize and consolidate the process requirements now contained in various parts of the Act and in the rules of procedure of such bodies as the Ontario Municipal Board and special-purpose committees.

17.10 The procedures are aimed at ensuring that people whose interests may be affected by a planning decision have a right to be notified, to make representations and to be heard, and to appeal decisions that adversely affect them. The procedures will be designed to operate in harmony with the changed requirements applying to the Ontario Municipal Board[2].

17.11 *Province-wide development standards* This regulation or series of regulations will prescribe a range of province-wide development standards which municipalities will have to take into account in developing their own planning standards. It will be aimed at preventing municipalities from applying requirements in their planning actions that would have the effect of adding unreasonably to the cost of housing.

17.12 The regulation's standards will not interfere unduly with a municipality's traditional prerogative to set planning standards in such instruments as official plans and zoning by-laws. They will be directed instead to obtaining a broad consistency of development standards across the province as well as discouraging unreasonable ones. Standards will be permitted to vary to accommodate regional differences[3].

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1 See Chapter 12.

2 See Chapter 12 for details of the proposed procedure for notification, hearing and appeal, and Chapter 13 for proposed changes to OMB procedures.

3 See Chapter 14.

17.13 *Exempting facilities from occupancy standard restrictions in zoning by-laws* Chapter 14 proposed that municipalities be permitted to regulate the occupancy of dwellings generally only by limiting the number of persons living in a dwelling (with the exception of natural families). Although the general power to regulate occupancy by a person's status will be eliminated, provision *will* remain for a municipality to zone for such specific uses as adult-only buildings and senior citizen homes. Regulations will be issued exempting such facilities and, where applicable, prescribing standards relating to them.

17.14 *Maximum fees for processing applications* To regulate the widely varying, and occasionally excessive, fees which municipalities charge for processing planning applications, a regulation will be issued prescribing maximum amounts that they may charge for all types of planning fees.

17.15 *Provincial public works* Ministries and other provincial agencies will be required by this regulation to take municipal planning policies and instruments into account in developing their own programs, and to consult with affected municipalities prior to carrying out any provincial public works. The regulation will establish procedures for consultation between provincial agencies and municipalities, and will allow time periods for exchange of comments.

Policy Circulars[4]

17.16 Policy circulars are a new instrument which will be recognized in the Act to establish a better framework within which municipalities can develop their own planning policies. The circulars will allow the Minister of Housing to formally declare and publish matters of provincial policy affecting municipal planning. Provision will also be made for the joint publication of circulars with other ministries so that specific inter-ministerial concerns can be addressed.

17.17 While not having the full legal force of regulations, these circulars will have to be taken into account by municipalities, the Ontario Municipal Board and provincial ministries and agencies when dealing with any planning matter.

17.18 The initial circulars described here are intended mainly to explain the changes that will be made in the ways the province supervises municipal planning actions. Other policy circulars will be issued on specific provincial policies affecting municipal planning as they are developed.

17.19 *Criteria for delegating Minister's authority* The extended delegation of the Minister's authority to municipalities is central to this White Paper. This circular will set out the Ministry's policy on which municipalities may qualify for delegation and which powers may be delegated. It will also establish the conditions which a municipality must meet to qualify to receive a delegated power.

17.20 *Minimum scope and content of plans for differing municipal circumstances* The government will continue to encourage plans to be prepared only to the level of detail required for local circumstances. This circular will explain that a plan for a small rural municipality can be less complex than a plan for a large urban centre, and that a plan for a lower-tier municipality should have a different level of concern than a plan for an upper-tier municipality.

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[4] See also Chapter 4.

17.21 To keep this policy flexible, the circular will not try to specify the exact scope and content of various levels of plans. It will indicate instead the *minimum* content that various types of plans must have to satisfy Ministerial approval requirements.

17.22 *A hierarchy of official plans* The new Act will specifically recognize upper-tier official plans and distinguish them from lower-tier plans. The Act will also allow municipalities, in an official plan, to provide for the preparation of secondary plans. The Act will also state that a lower-level plan will be required to generally conform with a higher-level plan.

17.23 A circular will generally explain this hierarchial concept of municipal plans and outline the range of policy areas expected in each level of plan. It will provide for municipalities to deal with basic policies within the provincially approved official plan and to reserve the more detailed matters for secondary plans which will not require provincial approval.

17.24 *Changes in municipal adoption and Ministerial approval of official plans* Responsibility for preparing official plans will in future rest directly with municipal councils. This circular will outline the effects of this change. It will also explain the procedures for public notification of plans prior to their adoption, and the procedures that will allow secondary plans to come into force without Ministerial approval.

17.25 The circular will also outline the measures municipalities should take to facilitate the coming into effect of the modified approval process described in Chapter 4. Generally, it will provide for municipalities to adopt primary official plan documents dealing only with municipal-wide development policies. As well, it will outline the matters that are of interest to the Minister in exercising approval power, and will explain the approach of confining provincial approval to an examination of the plan in the context of established provincial interests and policies.

17.26 *Preservation of agricultural land* This circular will be published jointly by the Ministers of Agriculture and Food and Housing and will be based essentially on the *Foodland Guidelines* published by the Ministry of Agriculture and Food in 1978.

Planning Guidelines

17.27 The government intends to augment its advisory function by extending the use of planning guidelines. These are basically municipal information publications and unlike regulations or policy circulars they have no legal force. They are purely advisory.

17.28 Many of the guidelines that have been issued to date, for example, those on sections 35a and 35b of the Act and those covering process requirements will be revised and re-issued to reflect the changes in the new Planning Act. When the new Act comes into effect, the following guidelines will be issued and these will be added to as the need arises.

17.29 *Public involvement in official plans* The new Act will not specify exact procedures to be used by municipalities for general public involvement in the preparation of official plans, because there are several effective ways of doing this. A guideline will be issued, though, to describe various methods that can be used by local government to facilitate public participation. This will help municipalities to determine the particular methods best suited to them.

17.30 *Flexibility in legal interpretation of plans* Legal conformity of municipal by-laws and public works to official plan policies will continue to be required. However, to discourage the preparation of official plans that are either unduly vague or too legally precise, a planning guideline will advise municipalities of some of the problems of strict conformity and suggest ways to make plans more flexible in interpretation.

17.31 *Procedures for review of official plans* The Act will require municipalities to formally review their official plans at least once every five years. This guideline will elaborate on the need for ongoing review of planning policies. As well as dealing with the scope and procedures for the mandatory review, it will indicate the need for municipalities to monitor the relevance and adequacy of official plan policies on a more or less continuing basis.

17.32 *Revised zoning system* As indicated in Chapter 10, the current system of land use control through zoning will be modified to rationalize the various purposes for which zoning by-laws are used by grouping their provisions under long term controls, short term controls and site plan control. This guideline will explain the nature and purpose of each of these controls, their relationship to each other and to the planning system as a whole.

17.33 Municipalities will be encouraged to examine their current by-law provisions and revise them to take account of the modified system.

17.34 *Special zoning controls* The revised zoning system will authorize the use of special zoning techniques including bonus zoning, interim control by-laws, holding by-laws and temporary use by-laws. A series of guidelines will describe how each of the techniques should be used, the procedures to enact and operate them, and the general content of the documents and of supportive official plan policies where required.

17.35 *Non-conforming uses* The Act will authorize the amortization of non-conforming uses in a limited way. A guideline will explain this technique, outline under what circumstances amortization may be used and the procedures for operating the controls. It will describe the legislative provisions relating to the establishment, status, continuance and termination of non-conforming uses, and will encourage municipalities to maintain an inventory of non-conforming uses and buildings. Municipalities will also be encouraged to legally recognize existing non-conforming uses that are compatible with adjoining uses.

APPENDIX

Delegation of The Minister of Housing's Authority

Under the current section 44b(2) of *The Planning Act* any of the Minister of Housing's authority under the Act may be delegated to municipalities, while under section 30a the Minister's severance granting authority in northern Ontario may be delegated to planning boards. Other functions of the Minister not covered by legislation (monitoring land severance decisions and commenting to the Ontario Municipal Board on zoning by-laws) are delegated by direct administrative arrangement with the municipality or agency concerned. The following delegation of authority has taken place:

Monitoring land division committee and committee of adjustment decisions on severances and minor variances:

Durham, Haldimand-Norfolk, Halton, Hamilton-Wentworth, Muskoka, Niagara, Ottawa-Carleton, Peel, Sudbury, Metro Toronto, Waterloo, York.	August 29, 1974

Commenting to the OMB on local municipal zoning by-laws:

Metro Toronto	January 1, 1971
Durham, Halton, Hamilton-Wentworth, Niagara, Ottawa-Carleton, Peel, Waterloo, York	September 16, 1974
Muskoka	May 1, 1976
Oxford County	October 1, 1977

Subdivision approval:

Halton, Hamilton-Wentworth, Ottawa-Carleton, Waterloo	June 1, 1975
Peel	July 1, 1975
Metro Toronto, York	November 1, 1975
Muskoka	June 1, 1976
Niagara	September 1, 1977
Oxford County	October 1, 1977
Sudbury	August 1, 1978

Condominium approval:

Ottawa-Carleton, Peel, Waterloo	June 1, 1977
Hamilton-Wentworth	August 1, 1977
Muskoka, Metro Toronto	July 1, 1978

Minister's land severance approvals for all or part of the planning area:

East Ferris Planning Board	August 1, 1977
Ignace Planning Board, St. Joseph Island Planning Board	February 1, 1978
Sioux Lookout Planning Board	March 1, 1978
Kapuskasing and District Planning Board	September 1, 1978
Sault Ste. Marie North Planning Board	October 1, 1978
Geraldton and Suburban Planning Board	November 1, 1978
Lakehead Planning Board	February 1, 1979

Local official plan approvals:

Region of Waterloo	February 1, 1978

Administration of Minister's zoning orders:

Kapuskasing and District Planning Board	June 2, 1978
Hearst Planning Board	June 26, 1978

Ministry of Housing

The Honourable Claude F. Bennett, *Minister*
Richard Dillon, *Deputy Minister*
Wojciech Wronski, *Assistant Deputy Minister Community Planning*
John Bell, Q.C., *General Counsel*

Local Planning Policy Branch

G. Keith Bain, *Director*
Gerald Fitzpatrick, *Manager, Policy Section*
Paul Featherstone, *Senior Planner*
Paul Ross, *Senior Planner*
Evan Wood, *Senior Planner*

Editorial Assistance: Roy Grant, Ministry of Treasury and Economics
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